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S. HRG. 101-623

SAFEGUARDING THE INTEGRITY OF FOOD SHIPMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1751

TO PROHIBIT THE USE OF REFRIGERATED MOTOR VEHICLES FOR THE TRANSPORTATION OF SOLID WASTE, TO PROHIBIT THE USE OF CARGO TANKS IN PROVIDING MOTOR VEHICLE TRANSPORTATION OF FOOD AND HAZARDOUS MATERIALS, AND FOR OTHER PURPOSES

S. 1904

TO REQUIRE THE SECRETARY OF TRANSPORTATION TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE REGULATION OF MOTOR VEHICLE TRANSPORTATION IN ORDER TO ENSURE THAT FOOD IS NOT MADE UNSAFE AS A RESULT OF ITS TRANSPORTATION BY MOTOR VEHICLES, AND FOR OTHER PURPOSES

MARCH 1, 1990

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SAFEGUARDING THE INTEGRITY OF FOOD SHIPMENTS

THURSDAY, MARCH 1, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SR-253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Robert Holleyman and Ivan Schlager, staff counsels and Gerri Hall, minority professoinal staff member.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The subcommittee will please come to order.

In recent months, there has been a growing awareness of transportation practices that pose a serious threat to food safety. A problem arises when waste and chemicals are transported in the same vehicle used later to transport food. This practice, of hauling in one direction with waste or chemical matter, and returning in the other direction with food cargo, is known as backhauling.

Without some form of proper protection, backhauling can be deadly.

Tank trucks carrying toxic chemicals should not also carry the apple juice served at the breakfast table of Americans. Yet this is exactly the type of practice that has been occurring without any specific Federal regulations to either prohibit contamination or mandate proper decontamination.

In my view, legislation is necessary since this practice has not been addressed by the Federal agencies with existing responsibilities for food safety.

I am pleased that two other Members of the Committee, Senator Gore and Senator Gorton, have also taken an active interest in this issue, with each having proposed legislation to restrict backhaul practices.

I can assure them of my commitment to see to it that legislation is enacted at the earliest possible time to stop this problem.

That backhauling is a problem has been well documented in recent months by the media and in hearings before the House of Representatives. Much of the attention that has been given to this problem arises from testimony of whistle blowers, who have stepped forward in an attempt to stop this practice—like the truck

driver in Eastern Washington State. He testified that for two years they were ordered to haul juices, cooking oils, and other food grade liquids in tank trucks that also carried chemicals.

These and other accounts have alerted all of us to the problem.

Today's hearing is intended to help us end practices like these, which could jeopardize the health and safety of the public and our children.

Testifying today will be Members of the House who have proposed legislation to combat this practice, as well as representatives of the Tennessee Public Service Commission and the Washington State Department of Agriculture, who will provide State perspectives on legislative solutions.

Also testifying will be a panel of Federal witnesses, whose departments either have existing or proposed authority for handling this matter.

In addition, we will hear from panels representing rail and truck carriers, as well as food processors and the waste disposal industry.

Let me close by saying that, from my perspective, unregulated backhauling poses a real problem that demands the attention of Congress and the administration.

I trust that today's witnesses will help provide this Committee with the information that is necessary to help us address this problem in an expeditious and comprehensive manner.

After calling on Members of the Committee for any opening statements they might have I will begin by calling the first panel.

I recognize at this time my colleague from Washington, Senator Gorton.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Mr. Chairman, thank you for agreeing to hold the hearing so early in this new session of the Senate on my bill, S. 1751, the Safe Transportation of Food Act, and on a similar bill introduced by my friend, Senator Gore.

The first such bill, of course, was that of Congressman Clinger of the House, to whom we all owe a great debt of gratitude.

It is gratifying that you have acted so promptly on this issue because we simply cannot gamble with food safety and the public's health any longer. I am delighted to listen to your own opening statement and to hear of your own very strong support and leadership in this field.

Last September, a number of readers of the "Seattle Post-Intelligencer" must have choked on their morning fruit juice when they read their morning paper. James Wallace, a reporter for the "P-I," broke a story detailing a disgusting and appalling truck practice.

As this graphic (indicating) from the "P-I" so dramatically shows, truckers were alternately hauling chemicals and edible liquids, such as fruit juices, in the same tanker trucks. They are distinguished by the red color and the yellow color, as here (indicating).

For example, acrylic emulsion was carried just before cranberry juice. Marine lube oil was carried before kosher palm oil. A chemical resin used to make polyurethane for roofing was hauled before orange concentrate.

During all of these 23 trips, which lasted over three months, a sticky chemical resin, the very first thing carried (indicating), used to make carbonless copy paper went undetected as it coated the inside of the tanker.

As shocked as I was to learn of the practice of alternating chemicals and food loads, I was astounded to learn that it was perfectly legal.

While trucking firms could be charged under the Food, Drug and Cosmetic Act if adulteration of food occurred, this law offers the consumer very little real protection. There are so few inspectors at any level of government checking the integrity of liquid foods that, in reality, we are only relying on self-policing. This simply is not good enough.

The integrity of our food supply cannot be left up to an individual trucker's conscience. The risk is too great.

S. 1751 would prohibit the transport of food in a cargo tank that has been used to transport a hazardous material or hazardous waste. It would also prohibit the transport of solid waste in a refrigerated motor vehicle.

The bill also gives the Secretary of Transportation the authority to waive these rules if a case can be made that doing so was in the public interest. The presumption in this bill is the opposite of the current practice. By this, I mean that current law presumes that backhauling chemicals in a food truck is safe unless food is proven to be contaminated. My bill presumes that it is not safe to mix chemicals and foods in the same tank truck, and only after someone shows why a particular chemical will not jeopardize food will it be allowed to be carried in the same vehicle.

If I have a bias, then it is on the side of insuring food safety. Consumers must have confidence that the food they eat is safe.

I am pleased that we will be joined this morning by John Daly, the Assistant Director of Food Safety and Animal Health of the Washington State Department of Agriculture. Washington State citizens have been in the forefront in exposing this practice and working to stop it.

The Washington State Senate has passed a bill to prohibit this type of backhauling. The measure is now awaiting action in the House, action which is almost certain to take place.

I am proud that my State leads the country in this regard, but the practice is nationwide and a real solution must be nationwide as well.

Mr. Chairman, this bill has broad bipartisan support and has been endorsed by leading consumer groups. I ask unanimous consent that the November 21, 1989 letter from Consumers' Union and the Consumers Federation of America supporting my bill be included in the hearing record by reference.

And once again, I thank you for calling this hearing. I am looking forward to the testimony of the witnesses, and I hope that we will be able to act expeditiously.

Senator EXON. Senator Gorton, thank you very much.

I am about to recognize Senator Gore, who has also been a leader in this area and will do so in just a moment.

I would like to ask the two Members of the House of Representatives, who I understand are here, to please take their seats at the witness table. We will be going to them next.

Senator Gore.

OPENING STATEMENT BY SENATOR GORE

Senator GORE. Thank you very much, Mr. Chairman.

I, too, began working on this after Congressman Clinger took the lead on the House side. I, too, wish to acknowledge a debt of gratitude to him for initiating the public discussion of this issue.

There is an old saying when people find out about something that is clearly wrong. They say: "There ought to be a law."

Well, if there were ever a clearer example of a situation which compels you to say there ought to be a law, I don't know what it would be.

This practice of putting harmful chemicals in a tanker and then putting food and drink in the same tanker without cleaning it out is just ridiculous—even with cleaning it out. This is a practice which has to be stopped.

There ought to be a law. There must be a law, and we intend to pass a law.

Anyone who has heard the stories of truckers hauling garbage and hazardous chemicals in one direction and then loading the same trucks and tankers with food, without necessarily washing them first, has to respond with outrage and disgust.

That's how I responded, and that is why I introduced S. 1904, which is also a subject of the hearing today, the Clean Food Transportation Act.

I am very pleased to have a chance to work with the Chairman and with my friend and colleague, Senator Gorton. We have found ourselves working side by side on a number of issues, and I look forward to working with him on this one as well.

We must stop the practices aimed at by these two bills. No one should be afraid that our food supply is contaminated simply because our laws do not specifically prohibit practices that we know create serious health risks. In this case, there is simply no excuse if, by some chance, the Congress should fail to protect consumers from these dangers.

We know that and so we will act. But we have to get down to brass tacks. We have to pass the legislation quickly and get the detail right and start implementing them.

Members of my staff have spoken with truckers in Tennessee, who know all about this disgusting form of backhauling. The problem is they are afraid to share their stories publicly because they are afraid their candor will cost them their jobs.

We may never know, in quantifiable terms, the full extent of this problem in our country. Fear of retribution, fear of lost paychecks and lost jobs, along with embarrassment shared by several of the industries involved, may prevent us from ever knowing the full extent of the problem. But this cannot stop us from letting the American people know that Congress responded quickly and effectively to the problem, that Congress acted to insure that dangerous

backhauling is not permitted to any extent and will not endanger any consumer.

We must examine the role deregulation has played in backhauling, considering, for example, the trucker's problem of finding return shipments after off-loading food shipments and the need for decontamination procedures, which currently are unregulated. And we have to also take a look at a broader issue: our rapidly diminishing landfills.

In a real sense, this problem is yet another manifestation of a growing environmental crisis. We are producing so much garbage and waste that we are running out of places to put it and ways to deal with it.

This Committee has before it other legislation which I have introduced and which I will not go into at this point in an effort to deal with that larger, underlying problem. But the fact is because we are running out of landfill space in community after community, some unscrupulous trucking firms are carrying trash, garbage, and liquid waste in vehicles meant for food and taking it to landfill space in the Midwest and elsewhere.

Explanations for backhauling cannot become excuses for our inaction. There is no reason good enough to justify the contamination of the food we eat, the food we serve our families. Action must be taken that considers these issues and focuses on solutions and on stopping the backhauling.

The legislation I have introduced seeks to achieve this goal. I am persuaded that Senator Gorton's legislation is a very effective response as well. I am looking forward to examining the provision in S. 1904 which would involve the participation of the Motor Carrier Safety Assistance Program Inspectors in enforcing the decontamination requirements. Hopefully, these inspectors will be able to help stop drivers who falsify shipping documents by stating that the previous loads were food grade, drivers like those who testified before House Committees this past summer.

Under S. 1904, truckers would be required to keep detailed records of their previous cargo to document that the truck has been washed out between shipments. However, of course, no regulations are useful if they cannot be enforced, and by mobilizing the forces of State and Federal officials represented here at this hearing and in subsequent discussions on this issue, I know that we can protect consumers from the objectionable practices of backhauling.

In one news report, a trucker, who listened to his conscience and was eventually fired because he revealed the backhauling practices of his company, was quoted as saying, "If something ends up getting poisoned from a contaminated load, well I've tried. It's off me now."

Well, it's on our shoulders now. It is our responsibility. Let's not let the sacrifice of that trucker be wasted. It is time to act.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Gore.

We now have a panel of Members of the House followed by four additional panels. I am anxious to get started.

Are there any further opening statements by Members of the Committee?

Senator BURNS. Mr. Chairman, I have just a short opening statement, if you don't mind.

Senator EXON. Senator Burns.

OPENING STATEMENT BY SENATOR BURNS

Senator BURNS. Thank you very much.

I appreciate your holding these hearings and Senator Gorton fashioning the bill that I have co-sponsored with him. I, along with the rest of the Members of this Committee, was shocked when the practices of backhauling in the trucking industry were revealed.

In my State, we have mostly agricultural producers. This is what happens when we come up with a situation of food safety in this country. I know agriculture produces an awfully good product. But when it is mishandled along the way, it is usually agriculture that gets the black eye, even though they do not really have any control over it.

I was shocked to learn, as I'm sure all Americans were, that the orange juice that I and my family drank this morning may have commingled with chemicals used to make polyurethane for roofing and insulation. Or that the apple juice served with the school lunches may have commingled with asphalt emulsion. This practice known as "garbage backhauling" is perfectly legal. It is important that this Committee respond quickly, but appropriately, to prohibit backhauling practices which threaten food safety.

I think that the Department of Transportation is the agency responsible for monitoring food transportation. However, I also agree with those who have suggested that DOT should work with the Secretary of Agriculture, Secretary of Health and Human Services, soon-to-be Secretary of Environmental Protection, and possibly the Food and Drug Administration to define practices which threaten food safety. It is important to be specific in doing this. We should not issue broad mandates which will overburden transporters or shippers. For example, in the milk business the same truck which delivers fresh milk to the grocery store is likely to carry packaging material, damaged milk products and outdated milk products back to the warehouse. This practice is common and I see no reason why it should be prohibited. It would be an undue burden on the industry to have to hire two trucks to carry out one delivery.

It is also important from the standpoint of the transporters that we be specific and allow flexibility. I think the current legislation begins to address this issue by giving the Secretary of Transportation the authority to issue waivers. I also think that we should direct the Secretary to establish procedures and standards for cleaning. A truck which was once used to haul certain kinds of waste should not then be prohibited from hauling any food product forever. The Secretary in consultation with the above mentioned Secretaries should determine materials which should never be hauled in the same cargo unit as food products and prohibit that practice. However, they should also determine which materials can be hauled in a cargo unit, ways that the cargo unit can be cleaned, and then allow the transport of food products in that cleaned cargo unit.

I look forward to working with my colleagues and others interested in this issue to fashion legislation which will address this issue of "garbage backhauling" and ensure food safety in transportation.

So I think it is high time that we took a look at this practice. I applaud Senator Gorton for the initiative that he has taken and for the work that he has done on this. I am happy to co-sponsor his bill and am more than happy to hear from the witnesses that we have this morning.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Burns.

Senator Robb.

Senator ROBB. Mr. Chairman, thank you, but I would pass so that we can get on with the witnesses.

Senator EXON. Thank you very much, Senator.

I have a statement for the record from Senator Pressler.

[The statement and bills follow:]

OPENING STATEMENT BY SENATOR PRESSLER

Mr. Chairman, thank you for scheduling this timely hearing. Recent media reports have turned our attention to the integrity of food shipments.

We can only hope that the incidents that have been described are isolated occurances. However, even the limited practice of backhauling food products after a cargo tank truck has handled hazardous materials presents a substantial risk to the general population.

I commend my colleagues on this committee, Senators Gorton and Gore, who have each introduced legislation to curtail this practice. I am also aware of the considerable effort of our House colleagues on the "garbage backhauling" issue.

Again, Mr. Chairman, thank you for moving so quickly with this hearing. I look forward to hearing and reading today's testimony.

101ST CONGRESS
1ST SESSION

S. 1751

To prohibit the use of refrigerated motor vehicles for the transportation of solid waste, to prohibit the use of cargo tanks in providing motor vehicle transportation of food and hazardous materials, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12 (legislative day, SEPTEMBER 18), 1989

Mr. GORTON (for himself, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To prohibit the use of refrigerated motor vehicles for the transportation of solid waste, to prohibit the use of cargo tanks in providing motor vehicle transportation of food and hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safe Transportation of Food Act".

SEC. 2. REFRIGERATED MOTOR VEHICLES.

Effective beginning on the 180th day following the date of the enactment of this Act, no person shall use a refrigerated motor vehicle to provide transportation of solid waste.

SEC. 3. CARGO TANKS.

Effective beginning on the 180th day following the date of the enactment of this Act, no person shall use a cargo tank to provide motor vehicle transportation of food if such tank has been used to transport a hazardous material or hazardous waste.

SEC. 4. WAIVER AUTHORITY.

After notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this Act or any regulation issued under this Act with respect to any class of persons, class of motor vehicles, class of solid waste or hazardous material, or food if the Secretary determines that such waiver is not contrary to the public interest. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

SEC. 5. REGULATIONS.

(a) ISSUANCE.—Not later than 150 days after the date of the enactment of this Act, the Secretary shall issue such regulations as may be necessary to carry out the objectives of sections 2, 3, and 4. Such regulations may include requirements relating to recordkeeping, labeling of vehicles, moni-

toring of compliance, and which classes of persons, vehicles, and materials need waivers under section 5.

(b) RULEMAKING PROCEEDING.—Not later than 30 days after the date of the enactment of this Act, the Secretary shall initiate a rulemaking proceeding to issue regulations pursuant to subsection (a).

SEC. 6. ADDITIONAL MEASURES.

(a) STUDY.—

(1) DESCRIPTION.—The Secretary shall conduct a study to determine—

(A) those measures, in addition to the prohibitions of sections 2 and 3, which are necessary to assure that food transported in refrigerated motor vehicles and cargo tanks is not made unsafe as a result of such transportation, and

(B) those measures with respect to the transportation of food, or of solid waste, hazardous materials, or other materials, or of both by motor vehicles (in addition to refrigerated motor vehicles and cargo tanks) which are necessary to assure that such food is not made unsafe as a result of such transportation.

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall

submit to Congress a report on the results of the study conducted under this section.

(b) REGULATIONS.—

(1) ISSUANCE.—Not later than the 365th day following the date of the enactment of this Act, the Secretary, on the basis of the results of the study conducted under this section, shall issue such regulations with respect to the transportation of food, or of solid waste, hazardous materials, or other materials, or of both by motor vehicles as the Secretary determines are necessary to assure that such food is not made unsafe as a result of such transportation.

(2) TRANSMITTAL TO CONGRESS.—The Secretary shall transmit to Congress the regulations issued pursuant to paragraph (1).

(3) LIMITATION.—The regulations issued pursuant to paragraph (1) shall not take effect before the 90th day following the date of their transmittal to Congress.

SEC. 7. POWERS AND DUTIES OF THE SECRETARY.

(a) IN GENERAL.—The Secretary shall have the same powers, duties, and authorities under this Act as the Secretary has under section 109 (other than subsections (d) and (e)) of the Hazardous Materials Transportation Act.

(b) ANNUAL REPORT.—The Secretary shall prepare and submit to the President for transmittal to Congress on or before June 15 of each year a comprehensive report on transportation regulated under this Act during the preceding calendar year.

SEC. 8. PENALTIES.

(a) CIVIL.—

(1) IMPOSITION.—Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this Act or a regulation issued under this Act shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(2) ASSESSMENT.—The amount of civil penalty under this subsection shall be assessed by the Secretary by written notice.

(3) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have

committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(4) RECOVERY AND COMPROMISE.—A civil penalty under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. Prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

(5) SET-OFF.—The amount of a civil penalty under this subsection, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged.

(6) DEPOSIT.—All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) CRIMINAL.—A person is guilty of an offense if he willfully violates a provision of this Act or a regulation issued under this Act. Upon conviction, such person shall be subject, for each offense, to imprisonment for a term not to exceed 5 years or a fine determined in accordance with title 18, United States Code, or both.

SEC. 9. SPECIFIC RELIEF.

(a) IN GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this Act or an order or regulation issued under this Act. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) IMMINENT HAZARD.—

(1) GENERAL RULE.—If the Secretary has reason to believe that an imminent hazard exists, the Secretary may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting any transportation subject to regulation under this Act which is responsible for such imminent hazard or for such order as is necessary to eliminate or ameliorate such imminent hazard.

(2) EXISTENCE.—As used in this subsection, an imminent hazard exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

SEC. 10. RELATIONSHIP TO OTHER LAWS.

(a) PREEMPTION AS GENERAL RULE.—Except as provided in subsection (b), any requirement of a State or political subdivision thereof which is inconsistent with any requirement of this Act or any regulation issued under this Act is preempted.

(b) EXCEPTION.—A requirement of a State or political subdivision thereof which is not consistent with any requirement of this Act or any regulation issued under this Act is not preempted if, upon the application of an appropriate State agency, the Secretary determines in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirement of this Act or the regulations issued under this Act, and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

SEC. 11. DEFINITIONS.

As used in this Act—

(1) COMMERCE.—The term "commerce" means—

(A) trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a

place outside of the United States) or is between 2 places in a State through another State or a place outside of the United States, or

(B) any trade, traffic, or transportation in any State which is not described in subparagraph (A).

(2) HAZARDOUS MATERIAL.—The term "hazardous material" has the meaning such term has under section 103 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1802).

(3) HAZARDOUS WASTE.—The term "hazardous waste" has the meaning such term has under section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(4) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on highways; except that such term does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(5) FOOD.—The term "food" means (A) articles used for food or drink for man, and (B) articles used for components of any such articles.

(6) PERSON.—The term "person" means an individual, firm, copartnership, corporation, company, asso-

ciation, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include (A) the United States Postal Service, or (B) for the purposes of sections 8 and 9, any agency or instrumentality of the Federal Government.

(7) REFRIGERATED MOTOR VEHICLE.—The term "refrigerated motor vehicle" means any motor vehicle which is capable of being used to transport refrigerated products for human consumption.

(8) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(9) SOLID WASTE.—The term "solid waste" has the meaning such term has under section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(10) STATE.—The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

(11) TRANSPORTS OR TRANSPORTATION.—The term "transports" or "transportation" means any movement of property in commerce by motor vehicles.

(12) UNITED STATES.—The term "United States" means all of the States.

101ST CONGRESS
1ST SESSION

S. 1904

To require the Secretary of Transportation to take certain actions with respect to the regulation of motor vehicle transportation in order to ensure that food is not made unsafe as a result of its transportation by motor vehicles, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, NOVEMBER 6), 1989

Mr. GORE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To require the Secretary of Transportation to take certain actions with respect to the regulation of motor vehicle transportation in order to ensure that food is not made unsafe as a result of its transportation by motor vehicles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Clean Food Transportation Act".

FINDINGS

SEC. 2. The Congress finds that—

(1) Americans are entitled to receive food and other consumer products that are not made unsafe as a result of certain transportation practices;

(2) the American public is threatened by the back-hauling of products potentially harmful to consumers in motor vehicles, including cargo tanks, which are used to transport food and other consumer products; and

(3) the risks posed to consumers by such back-hauling practices are unnecessary, and such practices must be terminated.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "cargo tank" shall have such meaning as the Secretary shall define by regulation.

(2) The term "commerce" means—

(A) trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States, or

(B) any trade, traffic, or transportation in any State which is not described in subparagraph (A).

(3) The term "infectious waste" shall have such meaning as the Secretary shall define by regulation.

(4) The term "food" means (A) articles used for human food or drink and (B) articles used for components of any such articles.

(5) The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on highways; except that such term does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(6) The term "nonfood product" means any article, material, substance, or product which is not food.

(7) The term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, Indian tribe, or agency or instrumentality of any government or Indian tribe, but such term does not include, for the purposes of sections 12 and 13, any agency or instrumentality of the Federal Government.

(8) The term "refrigerated motor vehicle" means any motor vehicle which is capable of being used to transport refrigerated products for human consumption.

(9) The term "Secretary" means the Secretary of Transportation.

(10) The term "solid waste" has the meaning such term has under section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(11) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States.

(12) The term "transports" or "transportation" means any movement of property in commerce by motor vehicles.

(13) The term "United States" means all of the States.

REFRIGERATED MOTOR VEHICLES

SEC. 4. (a) No person shall use, or arrange for the use of, a refrigerated motor vehicle to provide transportation of food if such vehicle has been used to transport solid waste (other than a category or type of solid waste which is included on a list published under subsection (b)).

(b) The Secretary shall publish in the Federal Register a list of categories or types of solid waste which the Secretary has determined do not make food unsafe as a result of transportation in a motor vehicle which is used to transport food. The Secretary may periodically amend such list by publication in the Federal Register.

CARGO TANKS

SEC. 5. (a) No person shall use, or arrange for the use of, a cargo tank to provide motor vehicle transportation of food if such tank has been used to transport a nonfood product (other than any nonfood product which is included on a list published under subsection (b)).

(b) The Secretary shall publish in the Federal Register a list of nonfood products which the Secretary has determined do not make food unsafe as a result of transportation in a cargo tank which is used to transport food. The Secretary may periodically amend such list by publication in the Federal Register.

(c) After the three hundred and sixty-fifth day following the date of enactment of this Act, no person shall—

(1) use, or arrange for the use of, a cargo tank to provide motor vehicle transportation unless such tank is identified, by a permanent marking on such cargo tank, as transporting only nonfood products or as transporting only food and nonfood products which are included on a list published under subsection (b);

(2) use, or arrange for the use of, a cargo tank to provide motor vehicle transportation of food if such cargo tank is identified pursuant to paragraph (1) as a cargo tank transporting only nonfood products;

(3) use, or arrange for the use of, a cargo tank to provide motor vehicle transportation of a nonfood product which is not included on a list published under subsection (b) if such cargo tank is identified pursuant to paragraph (1) as a cargo tank transporting only food and nonfood products included on such a list; or

(4) receive any food or nonfood product which has been transported in a cargo tank in violation of paragraph (1), (2), or (3).

TRANSPORTATION OF ASBESTOS AND INFECTIOUS WASTE

SEC. 6. No person shall use, or arrange for the use of, a motor vehicle to provide transportation of asbestos or any infectious waste except in a motor vehicle which is used only to provide transportation of asbestos, infectious waste, and any other nonfood products which the Secretary determines are appropriate to be transported in a motor vehicle which transports asbestos or infectious waste or both. The Secretary shall publish in the Federal Register a list of such products. The Secretary may periodically amend such list by publication in the Federal Register.

WAIVER AUTHORITY

SEC. 7. After notice and an opportunity for public comment, the Secretary may waive, in whole or in part, application of any provision of this Act or any regulation issued under this Act with respect to any class of persons, class of motor vehicles, or class of food if the Secretary determines

that such waiver is not contrary to the public interest. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

REGULATIONS

SEC. 8. (a) Not later than 150 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to carry out the objectives of sections 4, 5, 6, and 7. Such regulations shall include requirements relating to marking of cargo tanks and cleaning of cargo tanks. For purposes of carrying out the objectives of this Act, such regulations shall establish methods, operations, and procedures which may be used in cleaning cargo tanks between shipments. Such regulations may include requirements relating to marking and cleaning of other motor vehicles, recordkeeping, disclosure of products transported, monitoring of compliance, and waivers under section 7.

(b) Not later than thirty days after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding to issue regulations pursuant to subsection (a).

ADDITIONAL MEASURES

SEC. 9. (a)(1) The Secretary shall conduct a study to determine—

(A) those measures, in addition to the prohibitions stated in sections 4 and 5, which are necessary to ensure that food transported in refrigerated motor vehi-

cles and cargo tanks is not made unsafe as a result of such transportation, and

(B) those measures with respect to the transportation of food or other consumer products, or of solid waste or other materials which are not consumer products, or of both such products and materials, by other kinds or classes of motor vehicles, which are necessary to ensure that such food or other consumer products are not made unsafe as a result of such transportation.

(2) Not later than one hundred and eighty days after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the results of the study conducted under this section.

(b)(1) The Secretary, on the basis of the results of the study conducted under this section, may issue such regulations with respect to the transportation of food or other consumer products, or of solid waste or other materials which are not consumer products, or of both such products and materials, by motor vehicles as the Secretary determines are necessary to ensure that such food or other consumer products are not made unsafe as a result of such transportation.

(2) The Secretary shall transmit to the Congress the regulations issued pursuant to paragraph (1).

(3) The regulations issued pursuant to paragraph (1) shall not take effect before the ninetieth day following the date of their transmittal to the Congress.

TRAINING FOR TRANSPORTATION INSPECTORS

SEC. 10. The Secretary shall require all inspectors paid with funds under the Motor Carrier Safety Assistance Program to receive, within one year after the date of enactment of this Act, and on a periodic basis thereafter, the necessary training to conduct vigorous enforcement of this Act and regulations issued under this Act. As part of such training, the inspectors shall be trained in the recognition of food adulteration problems associated with the transportation of food and in the procedures for securing the assistance of the Department of Health and Human Services, Department of Agriculture, and other appropriate Federal and State agencies to support enforcement of this Act and any regulations issued under this Act.

POWERS AND DUTIES OF THE SECRETARY

SEC. 11. The Secretary shall have the same powers, duties, and authorities under this Act with respect to transportation regulated under this Act as the Secretary has under section 109 (a), (b), and (c)(2) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1808 (a), (b), and (c)(2)) with respect to transportation regulated under such Act.

PENALTIES

SEC. 12. (a)(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this Act or an order or regulation issued under this Act shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(2) The amount of civil penalty under this subsection shall be assessed by the Secretary by written notice.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(4) A civil penalty under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. Prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

(5) The amount of a civil penalty under this subsection, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged.

(6) All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) A person is guilty of an offense if such person willfully violates a provision of this Act or an order or regulation issued under this Act. Upon conviction, such person shall be subject, for each offense, to imprisonment for a term not to exceed five years or a fine determined in accordance with title 18, United States Code, or both.

SPECIFIC RELIEF

SEC. 13. (a) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief of redress a violation by any person of a provision of this Act or an order or regulation issued under this Act. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b)(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may petition an appropriate district court of the United States, or upon his request the

Attorney General shall so petition, for an order suspending or restricting any transportation subject to regulation under this Act which is responsible for such imminent hazard or for such order as is necessary to eliminate or ameliorate such imminent hazard.

(2) As used in this subsection, an imminent hazard exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

RELATIONSHIP TO OTHER LAWS

SEC. 14. (a) Except as provided in subsection (b), any requirement of a State or political subdivision thereof which is inconsistent with any requirement of this Act or any regulation issued under this Act is preempted.

(b) A requirement of a State or political subdivision thereof which is not consistent with any requirement of this Act or any regulation issued under this Act is not preempted if, upon the application of an appropriate State agency, the Secretary determines in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirement of this Act or the regulations issued under this Act, and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so

long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) No State or political subdivision of a State which applies for a preemption determination under subsection (b) may seek the same or substantially the same relief in any court until the Secretary has taken final action on the application or until one hundred and eighty days after filing the application, whichever is earlier.

COORDINATION PROCEDURES

SEC. 15. Not later than one year after the date of enactment of this Act, the Secretary, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the agencies of the United States and of the States with regulatory authority over motor carrier safety with respect to implementation and enforcement of this Act.

EFFECTIVE DATE

SEC. 16. (a) Except as otherwise provided, this Act shall take effect on the date of its enactment.

(b) Sections 4(a), 5(a), and 6 shall take effect on the one hundred and eightieth day following the date of enactment of this Act; except that the Secretary may extend such effective date with respect to one or more of such sections but not beyond the two hundred and seventieth day following such date of enactment.

Senator EXON. I understand that the Hon. Christopher H. Smith from the House of Representatives wanted to be here but may not be able to make it.

I would like to ask unanimous consent that any statement that Congressman Smith has to put in the record would be accepted as part of the record.

We are very much pleased to hear from two other leaders in this area, now: Hon. William F. Clinger of the House of Representatives from the State of Pennsylvania, who I believe introduced the first bill in this particular area.

I congratulate you, Congressman, for your initiative. We will hear from you first.

Then we will hear from Hon. Robert A. Borski of the House of Representatives, who has also shown a keen interest in getting something done in this particular area.

Congressman Clinger, we recognize you at this time. Thank you for being here.

STATEMENT OF HON. WILLIAM F. CLINGER, JR., U.S. REPRESENTATIVE FROM PENNSYLVANIA

Mr. CLINGER. Mr. Chairman, I want to thank you very much for scheduling this hearing on a very, very critical issue, as all of the panel have indicated. This is a pressing issue and I applaud your expeditious holding of this hearing.

I first became aware of this problem in May of last year when a reporter for a paper in my district, and Route 80 goes through my district, had been talking to truckers and had first become aware of this practice. He called and asked for my opinion and what I thought of it.

First of all, I didn't believe it. I couldn't possibly concede that people were actually allowed to and did haul foodstuffs to Eastern markets and then turn around and fill up their trucks and haul raw garbage back the other way.

But, having looked into it, I found out that indeed that was a practice. I then asked the Public Works and Transportation Committee of the House to hold a hearing. They did hold two hearings—the first on the backhauling in refrigerator trucks; the second as a result of what Senator Gorton has referred to because, as a result of our first hearing, truck drivers hauling tank trucks came forward and talked to the "Seattle Post-Intelligencer," and we first became aware that the practice was more widespread than we had initially thought.

The results that we found in those hearings were really appalling. On our highways, refrigerator trucks were hauling maggot-infested waste going to landfills. It was estimated that, on my stretch of Route 80, perhaps as many as half the refrigerator trucks going West were hauling garbage.

The issue of orange juice being hauled in tankers that hauled formaldehyde and other chemicals you already mentioned.

One trucker, testifying anonymously at our August hearing, had the following to say about backhauling garbage from the Northeast to the Midwest. He said of the ten largest for-hire meat carriers regularly hauling to the East Coast, "I have personally witnessed

three of them loading or unloading at landfills or generating stations, and I have heard from reliable sources of three more." That is a quote from his testimony, and that is six out of ten of those meat haulers. This is not very good encouragement for ordering a steak dinner.

In July of last year—and I think I have some pictures to show you—an accident occurred in my district which demonstrates the dangers of backhauling garbage in food trucks.

[Illustration]

This shows a refrigerated produce truck which crashed on Interstate I-80 near Clearfield, Pennsylvania. It was returning home after delivering a load of fresh produce—it happened to be avocados—to New York City.

The first photo shows the truck as its doors are being opened. The cloud that you see above it is not smoke. That is methane gas, which was produced by its cargo, and the cargo was maggot-infested garbage.

[Illustration]

The second photo is the same truck with its load being transferred into a dedicated garbage truck.

You might be interested to know that in the trade, this cargo is known as "New York City produce."

Senator GORE. You'd better be careful.

Mr. CLINGER. We thought as a result of these hearings and the publicity that was generated by them that the practice had pretty much come to a stop, at least until we would be able to get legislation in place to make it illegal for this practice to continue.

But only last week, I got a call which indicated that the practice has not stopped. A worker in an incinerator plant called my office to report a truck with a very dangerous backhaul load. This was just a week ago. According to the manifest, its previous load was swinging beef. Its present load was biohazardous waste, infectious medical waste, needles, et cetera, and its next load was to be boxed beef.

We reported that to the Department of Agriculture, and they have a full-scale investigation going on right now.

You have already indicated that, as a result of the first hearing, we did have testimony from tank truck haulers, which was equally appalling.

To the best of our knowledge, the percentage of truckers engaged in this practice is probably not large. But even one case I think is too much. That is why it has become a very high priority of mine, to see that this practice is forbidden.

As you have indicated, I did introduce H.R. 3386, the Safe Transportation of Food Act, and I have been joined in that effort by my very able colleague, Mr. Borski, who has made some very useful and some very, very constructive additions to the bill that has been reported out of the Public Works and Transportation Committee.

We are presently negotiating with the Energy and Commerce Committee, which has an equal interest in this measure. We hope to be able to have a bill that both of our Committees can support with which we can go forward.

My bill basically outlaws the backhauling of municipal solid waste in refrigerated food trucks and the backhauling of chemicals

in food grade tankers. It also requires the Secretary of Transportation to conduct a comprehensive study of backhauling in nonrefrigerated trucks to determine if this practice poses a threat to the public. If any of the practices are found to be dangerous, it requires the Secretary to draft regulations banning them.

I want to commend Senator Gorton and Senator Gore because I fully support your efforts in this body and your leadership in bringing this measure to the attention of the American people. I think we will have unanimous support for our efforts in getting this practice stopped. As I said before, H.R. 3386 should be reported out of the House soon, so quick consideration by this committee would enable us to begin protecting the public from this threat in the near future.

So, Mr. Chairman and Members of the Committee, I want to thank you again for permitting us to come and testify before you this morning.

Senator EXON. Mr. Clinger, thank you very, very much. I just want to tell you that the seriousness of this problem has come rushing down on all of us.

I thank you and the others who have done some studies and had this brought to your attention.

I just want to pledge, as Chairman of this Subcommittee, that obviously this is a priority matter as far as public health and consumer protection is concerned. We will go all out to come out with a bill that all parties can agree to as quickly as possible. If you will do likewise over in the House of Representatives and call on your leadership over there, we will call on our leadership over here to allow priority consideration of this bill. Because of the obvious public interest involved, I think maybe we can begin to resolve this problem rapidly. It is something that needs very rapid attention, indeed.

We appreciate very much your being here, Congressman Borski. Thank you for your help and leadership, and I am pleased to recognize you at this time.

STATEMENT OF HON. ROBERT A. BORSKI, U.S. REPRESENTATIVE FROM PENNSYLVANIA

Mr. BORSKI. Mr. Chairman, thank you for the opportunity to testify at this hearing on backhauling.

I am pleased that you are addressing this important problem and hope my testimony will provide assistance to you.

What I will do in my brief statement is to provide some insight into what we found during our investigations and how our bill addresses these concerns.

Following a report from my colleague from Pennsylvania, Mr. Clinger, the Subcommittee on Investigation and Oversight of the House Committee on Public Works and Transportation, where I serve as Ranking Member, undertook a comprehensive investigation into various backhauling practices. As a result of this investigation, our full Committee met to consider legislation to prohibit backhauling practices uncovered by the Subcommittee.

During the markup, I offered a substitute bill, which was unanimously adopted.

Few would believe, Mr. Chairman, trucks hauling food for a family table also serve as garbage trucks carrying solid waste to landfills. But such a practice has turned into a reality.

Trucking companies are attempting to survive in a highly competitive, deregulated market and need a return load from the East Coast. Meanwhile, Eastern municipalities, facing a critical lack of landfill space, must dispose of their solid waste at distant landfills.

As one trucker told us, "Garbage was a dream commodity. Hauling it pays well, and you can't destroy it, which means there is low insurance."

Another trucker said that any load is better than driving back empty.

We found that garbage hauled in refrigerated trucks posed the greatest threat to human health since these trucks carry unprocessed foods: meats, vegetables and fruits. One refrigerated truck, still containing hooks where meat had previously been hung up, pulled up to an Ohio landfill with a load of garbage.

A food science professor, Dr. Manfred Kroger of Penn. State, told us it would be extremely difficult to properly clean out a truck which had previously hauled garbage. In addition, Dr. Kroger stated that it was possible for bacteria to grow in a truck's refrigeration unit.

We concluded that solid waste should not be permitted to be hauled in refrigerated trucks, and our bill would prohibit such a practice.

As a result of that hearing and the publicity it generated, four courageous truck drivers from Washington came forward and revealed a more disturbing form of backhauling: cargo tanks, which one way carry hazardous liquid chemicals, such as formaldehyde, can then turn around and haul liquid food products, such as fruit juices or cooking oils.

Their story was told in a revealing series of investigative articles written by James Wallace of the "Seattle Post-Intelligencer."

The truckers testified before our oversight Subcommittee that backhauling food and chemicals was common in the industry. They said they were instructed to use a deodorizer to cover up any chemical smell that remained after the truck was washed out. They also told us that they were informed to lie to food shippers about their previous load if it had been a chemical.

In our legislation, we require that food be hauled in only cargo tanks dedicated to such use. However, we realize that, in some cases, there may be products, like soap, which could be hauled safely in a food cargo tank. Our legislation would allow this practice as long as the nonfood product was on a list of acceptable products, which will be determined by the Secretary of Transportation.

In terms of enforcement and compliance, I feel that two items are extremely important. One is that cargo tanks be permanently marked for either food use or nonfood use. The other is to hold all parties—the shipper, the broker, the transporter, and the receiver—responsible for violations and subject to civil and criminal penalties.

Under our bill, a cargo tank marked "food use" could not haul formaldehyde. If this occurred, then the shipper, broker, transporter, and receiver would be held in violation. Conversely, if a nonfood

use tanker carried orange juice, all parties would again be responsible. Quite frankly, it is doubtful that there would be a willingness by all of these different parties to engage in this type of criminal conspiracy.

Finally, Mr. Chairman, our subcommittee received reports of removed asbestos being hauled in trucks which carried consumer items—children's toys and vegetables. This practice is perhaps the most insidious.

Unlike garbage and, to some extent, chemicals in cargo tanks, there is no way to determine if the asbestos has been removed. Asbestos fibers are nearly invisible, can stay airborne for a long period of time, and exposure may not be apparent until years later.

The danger asbestos and infectious waste pose to the public requires its transportation to be carried out in dedicated vehicles.

Mr. Chairman, in closing, I urge you to act quickly in moving legislation which addresses these problems. Our legislation passed the Committee unanimously and enjoys broad- based support from the affected industries. Both the House and the Senate should move promptly to insure that the food supply of the American public is protected from avoidable contaminations.

Congress can and should pass legislation to ensure that Americans can be confident of the chain that carries our food across America and onto our tables.

Thank you, Mr. Chairman.

Senator EXON. Congressman Borski, thank you very much.

We thank both of you gentlemen. We would like to have you stay as long as you can to listen to the other witnesses, but I recognize that you have tough scheduled over at the House, as we do on this side, so you are excused.

Thank you for being here.

Mr. CLINGER. Thank you, Senator.

Mr. BORSKI. Thank you, Mr. Chairman.

Senator EXON. I would like to ask at this time that the statement prepared by Congressman Tom Luken, who has sponsored a bill in the House on this matter, be inserted into the record. Congressman Luken is Chairman of the House Subcommittee on Hazardous Materials, Energy and Commerce Committee.

I also would insert a statement from the Interstate Commerce Commission for inclusion in the record at an appropriate point.

I will call now our first panel to the witness table.

I understand that Mr. Keith Bissell of the Public Service Commission of Tennessee has been unavoidable detained and may be delayed. He is not here yet, but we will work him into our schedule later on.

I would like to call at this time, then, on Mr. John Daly, the Assistant Director, Food Safety and Animal Health, Washington State Department of Agriculture.

Mr. Daly, would you please come forward.

We thank you for coming a long distance for this hearing today. Certainly you and your Congressional leadership, under Senator Gorton, has been very up-front on this matter and have been extremely helpful.

Since I am sure you have some first-hand input for the Committee and probably some suggestions, we are pleased to recognize you at this time.

If you have a full prepared statement, we would accept that for the record. We would also ask you to summarize in any fashion that you see fit at this time.

STATEMENT OF JOHN DALY, ASSISTANT DIRECTOR, FOOD SAFETY AND ANIMAL HEALTH, WASHINGTON STATE DEPARTMENT OF AGRICULTURE

Mr. DALY. I appreciate that, Mr. Chairman. Thank you.

For the record, my name is John Daly. I am Assistant Director of the Department of Agriculture. Under the statute, our agency has primary responsibility for food safety from the production to the retail levels.

I appreciate being here this morning, Mr. Chairman and Members of the Committee, to present this testimony on the issue and practice of alternating food and nonfood products in the same trailers, containers, or tanker trucks.

Senator Gorton had already outlined some of the conditions that were found in Washington State, where truck drivers had come forward and indicated that they were concerned about the practice relative to the public safety and public health. We certainly appreciate their courage and, hopefully, they won't be finding themselves in a situation where employment opportunities in the future will be difficult because of their honesty.

In the interest of your time and patience, I will keep my comments mercifully short.

This activity was initially investigated in the State of Washington last year relating to bulk food tankers and chemicals, and then on the East Coast and the Midwest, relative to refrigerated food vans and solid waste.

Clearly, this is not a single, isolated event, nor is it confined by geographical limitations. I don't believe any questions remain as to whether or not individuals or firms in fact engage in this practice, but, rather, the degree to which it occurs.

I would suggest that whether it is a little or a lot is really quite immaterial. It is simply imprudent and offers both a preventable hazard and an unnecessary risk to consumers.

Currently, under applicable Federal and State laws, it is not illegal to haul a petroleum based chemical or lubricant product from New Jersey and, with or without cleaning, fill up with fruit juice in Washington to complete the round trip. The violation would come only if that particular load were sampled, analyzed, and found to be contaminated by either the Food and Drug Administration or a State agency with similar authority.

In this respect, regulatory agencies cannot carry the burden of proof required under current statutes and hope to reasonably and diligently protect the public health. There are simply too many vehicles and too many other aspects to food safety that are in need of address to warrant allocation of resources to a low percentage enforcement activity.

By "low percentage," I am referring to data that provides a causal link to adverse human health effects from this practice and the sheer number of carriers on the road, which give us a low statistical probability of proving adulteration on a random sample basis.

However, from our agency's position, we are more interested in preventing it than we are in proving it.

The State of Washington currently has a bill that was passed out of the Senate and is awaiting passage in the House, which specifies intent to prohibit certain compounds from ever being transported in a rail or motor vehicle used to transport food. It would also require clean-out procedures and placarding, which was brought up by Representative Clinger, for food-only grade tankers, rather than being able to alternate or flip-flop those loads.

Considerable detail, however, is left to the responsible agencies to establish by rule, which would be the Department of Agriculture and the Department of Health, working jointly, since there are still many unquantified concerns and some flexibility will be necessary to reasonably restrict carriers, while not excessively regulating non-health related aspects of the transportation industry.

The State legislature should be applauded for its efforts to protect its citizens. However, each State attempting to regulate interstate commerce within its own borders presents a cumbersome, uncoordinated, and minimally effective enforcement strategy.

Therefore, in the national interest, it is imperative for Congress to consider passage of a law directing the appropriate Federal agencies to restrict practices in food transportation that pose unacceptable and unnecessary risks to public health.

In addition, the resulting Federal statutes and regulations could then be adopted in their entirety or be utilized as a blueprint in establishing State regulatory programs.

In this regard, S. 1751 certainly provides a vehicle for national uniformity and equal protection to all States and citizens from potentially harmful practices, and we commend you for that.

I would urge a strong role for those Federal agencies with public health responsibilities since the issue appears less one of transportation than it is one of food safety.

I would invite and entertain any questions the Committee may have and do my level best to provide answers.

Again, thank you for the invitation and thank you for the opportunity.

Senator EXON. Mr. Daly, thank you very much. I am going to ask you just two questions, and then we will start down the line. If I have any further questions, I will come back to them. You are certainly one of our very important witnesses today.

I congratulate the State of Washington for taking some action in this area. I suspect, though, as I thought you said in your statement, that it is particularly important, even more important that we have some Federal legislation in this area. Obviously, if it is a problem with Washington State, it is a problem in the other States as well.

Mr. DALY. That's correct, Mr. Chairman.

Our difficulty is that it is impossible for a single State to regulate interstate commerce. We do admirably well in intrastate com-

merce, but things outside our own borders, when it is a national problem, would make an enforcement strategy difficult to carry out.

Senator EXON. I would like to ask that either you or Senator Gorton submit to the Committee, if we do not have it, a copy of the Washington bill. I think it would be helpful information as we proceed.

Has that been done, Senator Gorton, if you know?

Senator GORTON. Well, there isn't "a" bill. One bill has passed the State Senate and a slightly different bill is before the House.

It does look to me, though, as if Mr. Daly has copies of those bills. I would suspect, before we get to markup, since our legislative session ends on March 8, that we will have a final form of what has been passed.

Senator EXON. In any event, if we had what you have been doing in Washington, I think it would be helpful to us.

Mr. DALY. Yes, sir.

Senator EXON. The only other question that I have before we move along is this.

Can you tell us whether or not the investigations that you have done in Washington indicate the extent of this problem? Is it widespread? Is it infrequent or isolated? What kind of descriptive phrase would you place on it from the investigations that you have done in the State of Washington?

Mr. DALY. I think the most appropriate term, Mr. Chairman, is "inconclusive."

We have done some investigations. We feel that it is probably a minority that are actually engaging in these practices. However, it is difficult to quantify the extent, especially in light of the fact that some of the truckers have indicated they keep two sets of records. With the burden of proof on the State or on the Federal Government to prove that there is adulteration, that is extremely difficult with the variety of substances that they are hauling in trucks.

Again, it is difficult to characterize exactly the extent to which this is happening. But I would guess that it is less than 1 percent. But, when you figure that you have 125,000 tanker trucks alone in this country, 1 percent of that is a considerable number of trucks on the road that are doing that on a day-to-day basis.

Senator EXON. Well, I would just make the observation that if there is only one truck in the whole United States doing this and that is one truck too many. I, therefore, think that we should not have any great deal of difficulty in writing a really tough piece of legislation in this particular area. I am sure that no one would want to admit that this is a good practice. Therefore, I would think that all of us should join together in writing a piece of legislation that would be unequivocal in its enforcement provisions, with tough types of seizure and heavy fines for anyone who does it.

Thank you very much.

I am glad now to recognize Senator Gorton.

Senator GORTON. Mr. Daly, I appreciate your willingness to come all the way back across the country to testify on this matter and, for that matter, the public spiritedness of your State Department of Agriculture in sending you.

Do you know whether or not there is any legislation comparable to what the Washington State legislature is now considering, either in law or likely to pass in the immediate future in other States?

Mr. DALY. I am not aware of any statutes, State or local ordinances, or anything else that relate to this practice that are currently on the books. I did read somewhere that the State of Pennsylvania, apparently, within the own State legislature did have a bill that was attempting to restrict this practice or preclude it from happening, but I don't know the details of that bill.

Senator GORTON. Assuming that we pass a bill like the one that I have introduced or like the one that Senator Gore has introduced or that Congressman Clinger has introduced in the House in the course of this session of Congress, should that Federal bill provide a uniform Federal standard and preempt State standards, or would you want to retain the ability to enforce any State law as well?

Mr. DALY. I think that the States generally would appreciate the opportunity to enforce State laws as well. However, I do believe it is an important role for the Federal Government and certainly for Congress to play in this in providing a baseline of acceptable practices within the transportation and food industries.

If the States wanted to be more restrictive for whatever reason, that may be permissible. But I do feel that there needs to be a certain level of restriction placed on them by Congress, by law.

Senator GORTON. In the State of Washington, if either form of the bill which is now under consideration passes, what will be the agency responsible for enforcement?

Mr. DALY. It will be the Department of Agriculture that will be responsible for the enforcement; the Department of Agriculture in conjunction with the Department of Health will be responsible for the rule writing.

Senator GORTON. Mr. Daly, Senator Burns was called away to another meeting and asked me to ask you whether or not you believe that this practice also takes place on railroads, and whether the legislation should be expanded to include railroad transportation.

Mr. DALY. We feel, Senator, that there are some risks in railroads, and that is, in fact, why the State statute in Washington does cover rail transportation as well.

We investigate about 75 incidents a year. These are primarily grain and hopper cars, because we run about 45,000 a year through the State, through our export terminals. We find anywhere from 75 to 100 of those are contaminated with unidentified foreign substances.

Generally, it is found to be fertilizer or other compounds that were hauled at one time and that cars are just inappropriately cleaned or not cleaned at all.

Senator GORTON. My final question, Mr. Daly, or, rather, my final request of you is this.

Have you had an opportunity to examine and to analyze the two bills which are before this Committee and the various bills which are before the House of Representatives in any detail?

Mr. DALY. I did look at S. 1751, Senator. I do feel that, conceptually, that bill goes a long way to addressing the problem. While it is different in some detail and in some prescription, basically it covers the same concerns that we have in Washington State.

Senator GORTON. Could I ask you to go beyond S. 1751 and to look at the other bills as well if you have an opportunity in the next couple of weeks, and send to the Committee a letter with your recommendations as to the elements of each of them that you believe would be important in the setting of national standards?

Mr. DALY. I certainly will do that, Senator Gorton. I would appreciate the opportunity.

Senator GORTON. Thank you very much.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Gorton.

Mr. Daly, let me insert one follow-up question along this line.

Do you have any barge traffic to speak of in Washington State?

Mr. DALY. Yes, we do, sir.

Senator EXON. Does your law also include barge traffic as well as railroad and trucks?

Mr. DALY. It would under the definition of "vessels." Again, the State law is fairly broad. Well, it is not law yet, but the bill is fairly broad. It does cover vessels as well.

Senator EXON. Thank you.

Senator Gore.

Senator GORE. Thank you very much, Mr. Chairman.

First of all, let me say for the record that Commissioner Keith Bissell is one of the leaders in the National Association of Regulatory Utility Commissioners which is meeting in Washington. They are voting at this very moment, or were when this panel began. It is for that reason, because of his leadership position in that group and the fact that they are voting on their resolutions right now, that he is not here. He will be here a little bit later.

I was really appalled when this came out, Mr. Daly. I have already spoken my mind and am not going to cover old ground.

When I saw the hearing on the House side, that very day I instructed my staff and said look, this absolutely has to stop. We found from Tennessee truckers, as you and as Senator Gorton found from Washington State truckers, that this is a nationwide pattern. It really does have to stop.

The questions raised about how pervasive it is I don't think are really reasons to slow down the response which I hope will soon be forthcoming. First of all, the anecdotal evidence indicates that it is dangerously pervasive. Secondly, as the Chairman has said, even if it were only one truck, it would be worth acting. But it is not just one truck; it is many.

But the degree of risk involved is so great that we really have to move.

I am a little troubled, I have to say, at the reaction some have had in some of the Federal agencies. They expressed serious reservations about regulating this problem.

I read from one of the statements we will hear shortly, where the Federal agency says that we have serious reservations concerning the regulatory approach suggested in my bill and in Senator Gorton's bill.

You know, anybody who says we are over-reacting to this has to explain to me what was going through the minds of these trucking companies that caused them to think this was all right, that they could get away with this? How in the world could any business

person believe that this is an acceptable behavior in a civilized society?

I don't understand that.

If anybody thinks this is over-reacting, I mean, if they are going to act like that in the first place, we are going to respond, and we are going to come down just as hard as we possibly can on this practice. It is going to stop. It is flat going to stop.

I want to congratulate you for the work that you and your colleagues in the State of Washington have done. We will be looking at the vehicles that Slade and I have recommended to the Committee. But we are also going to be looking at Washington, at Pennsylvania, at Tennessee, and at other States where the laboratories of self-government often produce excellent ideas that we can then turn into a sensible, nationwide approach.

So I want to thank you for your participation here today.

Thank you very much, Mr. Daly. You are excused. Thank you very much for being here.

I will call now on panel number two: Alan Roberts, Director of the Office of Hazardous Materials; Mr. Robert Lake, Director of the Office of Compliance, Center for Food Safety, U.S. Food and Drug Administration; and Dr. Wilson E. Horne, Doctor of Veterinary Medicine, Meat and Poultry Inspection Operation, U.S. Department of Agriculture.

Gentlemen, welcome and thank you for coming here.

Without objection, any prepared remarks that you have made will be accepted at this point for inclusion in the record. Because of our time constraints, I would like each of you to summarize in any fashion that you see fit.

We will start with Mr. Roberts.

Mr. Roberts, you are recognized. Thank you very much for being here.

STATEMENT OF ALAN I. ROBERTS, DIRECTOR, OFFICE OF HAZARDOUS MATERIALS TRANSPORTATION, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. ROBERTS. Good morning, Mr. Chairman and Members of the Subcommittee.

I am Alan Roberts, Director of the Office of Hazardous Materials Transportation in the Research and Special Programs Administration at the Department of Transportation.

I am pleased to be here today to discuss the issues of food safety and transportation and the department's views on two bills referred to the Committee, S. 1751 and S. 1904, and similar legislation pending before Congress.

There are few issues on which there is such universal agreement as the importance of food safety. Reasonable minds may differ on the most effective means to insure the high standard of food quality that we Americans have come to expect, but few can question the value of maintaining that standard.

The Department of Transportation unequivocally endorses the Congressional objectives implicit in the bills that have been introduced to limit commercial practices which may compromise the

quality of the Nation's food supply. We do, however, have serious reservations concerning the regulatory approach suggested in those legislative initiatives.

Because the commercial practices that are of concern to all of us occur during transportation, many hold the view that the Department of Transportation should take the lead role in addressing this issue. We do not share this view.

I would like to provide some general background on the department's authority and experience on this issue.

The Hazardous Materials Transportation Act of 1974 provides the primary legislative authority for assuring the safe transportation of hazardous materials by all modes of transportation.

Generally, the Secretary's authority to implement the act has been delegated to my agency, the Research and Special Programs Administration, except that enforcement responsibilities are shared by the department's modal administrations.

The act requires the Secretary to establish a regulatory program to carry out the purposes of the act and to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce."

Under the HMTA, a hazardous material means a substance or material which the Secretary of Transportation has determined may pose an unreasonable risk to health, safety, and property. The term "hazardous material" includes hazardous substances and hazardous wastes subject to the Environmental Protection Agency's Hazardous Waste Manifest Requirements. The term generally does not include municipal solid waste or garbage.

The department's hazardous materials regulations include a comprehensive system of regulations pertaining to the preparation of shipping papers, placarding of vehicles, preparation and use of packagings, marking and labeling of packagings, loading of vehicles, and other transportation operations. The intent of the regulations is to communicate the presence of hazardous materials during transportation, reduce the potential for accidents during transportation, and reduce consequences should an accident occur.

Our statutory mandate is to regulate the transportation of hazardous materials to protect the public adequately against the risks involved in transporting those materials. Our authority under the HMTA does not extend to regulating the health and safety aspects of food or consumer commodity transportation, and we do not have the technical expertise or the regulatory experience to do so.

We believe that the issue is a public health concern that should be addressed by the agencies with the necessary expertise and existing regulatory responsibility for food safety, including the Food and Drug Administration within the Department of Health and Human Services and the Department of Agriculture.

These agencies have existing authority under the Federal Food, Drug, and Cosmetic Act, the Federal Meat Inspection Act, and other statutes to regulate the handling and transportation of food.

In addition, these agencies have the core expertise necessary to address this problem. Their technical knowledge, supported by a staff of experienced food safety experts and their institutional memory of previous food safety issues, is unmatched throughout the Federal Government.

Obviously, addressing the issue of food safety would require assistance from other agencies. The Department of Transportation would expect to share its expertise on vehicle design and operating practices. Similarly, the EPA is the Federal expert on all matters concerning solid waste. Only the FDA and USDA, however, are experienced in applying such information to the question of food safety. We believe it would be neither appropriate nor cost effective to develop duplicate food safety expertise within DOT.

Although the practice of backhauling has been publicized only in the last year, the Department has been aware for some time of the potential concerns related to the joint use of vehicles for transporting hazardous materials and products intended for consumer consumption.

EPA conducted a study in 1987, in consultation with the Department, and issued a report to Congress entitled, "Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials." Although the report did not address the transportation of solid waste, it identified only a few incidents of contamination over a 30 year period in the United States, and concluded that existing regulatory and other incentives were adequate, at that time, to minimize or avoid contamination.

Do you want me to pay attention to the light, Mr. Chairman?

Senator EXON. How much longer will you be, Mr. Roberts?

Mr. ROBERTS. Sir?

Senator EXON. How much longer will you be?

Mr. ROBERTS. About two or three more minutes.

Senator EXON. Then please proceed.

Mr. ROBERTS. Thank you.

Recently, the Department has been involved in a cooperative effort with other Federal agencies, including the FDA, USDA, EPA, and the Interstate Commerce Commission to share information and concerns regarding the practice of backhauling.

As a panel, we have testified before House Committees that are also concerned about the issue. In addition, we have met with representatives of the tank truck motor carrier industry who have established an ad hoc committee on food transportation to examine this problem. We support efforts to develop a consensus industry standard, which I am sure you will be hearing about later today.

Turning to the specific bills that are the focus of this hearing, the Department has several comments.

Both S. 1751 and S. 1904 include broad prohibitions on the use of refrigerated motor vehicles and cargo tanks to transport both food and nonfood products, although each contains authority for the Secretary of Transportation to waive the prohibitions if a waiver would not be contrary to the public interest.

Both bills require that the Secretary issue regulations within a few months of enactment to implement the prohibitions and waiver provisions. Both require the Secretary to study and report to Congress within 180 days of enactment on additional measures that may be needed to ensure food safety.

We are opposed to the creation of the additional statutory authority called for in these bills. We believe the existing authority under the Federal statutes referenced earlier is adequate to regulate the handling and transportation of food.

We also believe that the FDA and the USDA should continue to be responsible for implementing the objectives of these bills, with the assistance of the department. The Federal agencies with expertise should use their existing authority to work with the industry to eliminate any practices that would jeopardize food safety, and we stand ready to assist them in that effort.

That concludes my statement, Mr. Chairman. I would be happy later to answer any questions you may have, and I may have some comments on certain potential impacts of the legislation were we to proceed with it.

Thank you, Mr. Chairman.

Senator GORE. Mr. Chairman, may I interject a brief comment?

Senator EXON. Yes, but first let me make a comment and ask a question.

I listened very carefully to your statement, Mr. Roberts. Is it fair to say or to characterize your statement as there may be a problem here but you do not think it should be under the Department of Transportation? Is that the sum and substance of what you are saying?

Mr. ROBERTS. As a statutory mandate, Mr. Chairman, that we engage in the regulation of food safety, where that authority is already vested in two other major Federal agencies, the answer is yes, we do not think we should get into the regulatory business in those areas.

Senator EXON. What kind of job do you think these other agencies have done in this area thus far?

Mr. ROBERTS. Obviously, from all accounts, the other agencies could do better, and we could do better in assisting those agencies. I won't argue that point, Mr. Chairman.

Senator EXON. Go ahead with your comment, and then we will continue with the panel, Senator Gore.

Senator GORE. I think the American people want a government that responds forcefully when something of this magnitude is brought to the public's attention.

I don't think the American people want a government that looks for ways to avoid responsibility for solving the problem. If the problem consists of the mixing of hazardous cargoes in trucks with food, then we are going to have to mix in our response to the Department of Transportation, which governs trucks, and the agencies that govern the safety of food.

If the bad guys are going to mix this stuff up together, then the people charged with solving the problem are also going to have to get together to put a stop to it.

So I would hope that the Department of Transportation would rethink this response and come forward and say we would like to help, we want to be a part of the solution, and not just try to avoid any kind of role in solving it.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Gore.

Mr. Lake.

STATEMENT OF ROBERT LAKE, DIRECTOR, OFFICE OF COMPLIANCE, CENTER FOR FOOD SAFETY, FOOD AND DRUG ADMINISTRATION, ACCOMPANIED BY PHILIP DERFLER, OFFICE OF GENERAL COUNSEL

Mr. LAKE. Good morning, Mr. Chairman.

My name is Bob Lake. I am the Director for Compliance for FDA's Center for Food Safety and Applied Nutrition.

With me at the table, to my immediate right, is Mr. Philip Derfler, from our General Counsel's Office.

As the agency that is charged with protecting the public from adulterated and misbranded food, the Food and Drug Administration has taken the recent reports of backhauling very seriously.

We are concerned about the potential for food contamination and the potential risk to the public health posed by improper backhauling practices.

For this reason, FDA has initiated measures intended to prevent food adulteration.

On hearing of the backhauling practices, we immediately warned the food industry that we would act against adulterated food and reminded them of their responsibilities to insure against food contamination.

We also promptly investigated reports of backhauling. Our investigations, however, have not identified an instance where we could demonstrate actual food contamination as the result of backhauling practices in the trucking industry. We did, however, find truck drivers who admitted to previous backhauling practices.

The Food, Drug and Cosmetic Act, or FDCA, as presently drafted defines conditions under which food could be considered adulterated. For example, a food is adulterated under current law if, among other things, it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.

Food is also adulterated if it contains any poisonous or deleterious substance, which may render it injurious to health.

In addition, food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or rendered injurious to health.

The term "held" in this context has been interpreted by the agency to include storage and shipment in conveyances, whether they be ship, truck, or rail car.

Thus, to become adulterated, a food does not actually have to be contaminated, but only to have been held in an environment where it could reasonably have become contaminated.

Nonetheless, the current FDCA does not specifically prohibit backhauling.

Since reports about backhauling garbage in food trucks surfaced last year, FDA has been working with the industry to resolve the potential problems related to backhauling of both garbage and hazardous materials in trucks also used to transport food. Many of the liquid food processing industries already have established procedures for cleaning tanks and tankers used to transport their product. For example, the Interstate Milk Shippers Program, which is a joint program between FDA and the States, establishes mandatory

cleaning procedures and record keeping requirements for the transportation of milk.

The trade associations for the tank truck and food industries are in the final stages of drafting and adopting guidelines for assuring that food in tank trucks will not become contaminated.

The jurisdictions and expertise of many agencies, including the Department of Transportation, the Interstate Commerce Commission, Food and Drug Administration, Environmental Protection Agency and the United States Department of Agriculture are involved with potential problems of backhauling. Thus, any legislation should be consistent with the roles that these agencies are currently assigned in order to prevent conflicts with existing laws and regulations and to fully utilize the expertise of each agency.

It is not clear that S. 1751 and S. 1904 do this, though I would add that we, at FDA, are certainly willing to work with your staff and other Congressional staff on this matter.

FDA believes that it has authority under the FDCA to address potential adulteration situations that may occur as a result of the handling of food. In addition, we believe that close cooperation between affected agencies is an effective way to assure the safety of food cargoes transported in motor vehicles.

FDA will, therefore, continue to work with the food industry and to coordinate activities with other Federal agencies to address this concern as it continues its own surveillance and regulatory strategies under the Food, Drug and Cosmetic Act.

I appreciate the opportunity to express FDA's views and will certainly be willing to answer any questions you have.

[The statement follows:]

STATEMENT OF ROBERT LAKE, DIRECTOR, OFFICE OF COMPLIANCE, CENTER FOR FOOD SAFETY AND APPLIED NUTRITION, FOOD AND DRUG ADMINISTRATION, PUBLIC HEALTH SERVICE, HHS

Good Morning, Mr. Chairman.

I am L. Robert Lake, Director, Office of Compliance, Center for Food Safety and Applied Nutrition (CFSAN) of the U. S. Food and Drug Administration (FDA). With me at the table are Curtis Coker, Assistant to the Director, Division of Regulatory Guidance (CFSAN), and Philip Derfler, from our general counsel's office.

I am happy to be here today to discuss S. 1751," The Safe Transportation of Food Act," and S. 1904, "The Clean Food Transportation Act." These two bills would require the Secretary of Transportation to ensure that food is not made unsafe as a result of its transportation in motor vehicles that previously carried garbage, chemicals, or other hazardous materials.

During the past year, there has been much media attention regarding the practice of backhauling, or transporting non-food products including garbage, solid waste and hazardous chemicals in vehicles also used for transporting food. Some believe that backhauling is widespread, with few or no precautions taken to effectively prevent contamination of food by vehicles previously used to transport waste or toxic chemicals.

As the agency charged with protecting the public from adulterated and misbranded food, the Food and Drug Administration (FDA) has taken these recent reports seriously. We are concerned about the potential for serious food contamination and the potential risk to

the public health posed by improper backhauling practices. For this reason, FDA has initiated measures intended to prevent food adulteration. On hearing of the backhauling practices, we immediately warned the food industry and reminded them of their responsibilities to ensure against food contamination. We also promptly investigated reports of backhauling. Our investigations, however, have not identified a single instance where we could demonstrate actual food contamination as the result of backhauling practices in the trucking industry.

My statement will describe FDA's regulatory authority regarding the distribution of food and food products under the Federal Food, Drug, and Cosmetic Act (FDCA) and our efforts to verify reports of widespread garbage backhauling followed by transportation of food in the same vehicles.

Background

The FDA has the responsibility to protect the public health and safety under the FDCA, the basic food law of the United States. The FDCA is intended to assure the consumer that food is produced and distributed under sanitary conditions and is safe to eat. The FDCA specifically prohibits:

(a) the introduction, or delivery for introduction, into interstate commerce of any food that is adulterated;

(b) the adulteration of any food in interstate commerce; and

(c) the receipt in interstate commerce of adulterated food.

The FDCA defines conditions under which food would be considered adulterated. For example, a food is adulterated if, among other things, "it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food." Food is also adulterated if it "contains any poisonous or deleterious substance which may render it injurious to health."

In addition, food is adulterated "if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or rendered injurious to health." (Emphasis added.) (The term "held" includes storage and shipment in conveyances.) Thus, to become adulterated, a food does not actually have to be contaminated, but only to have been held in an environment where it could reasonably have become contaminated.

The FDCA authorizes the FDA to seize adulterated food, and pursue injunctions and criminal actions against people or firms causing the adulteration of foods. The Agency works closely with the States, which use their embargo authority to expeditiously withhold adulterated goods from further distribution.

Under the authority of the FDCA, FDA has issued interpretive

regulations providing general guidance for food processors as to what FDA believes are "Good Manufacturing Practices" (GMPs). GMPs set forth the minimum standards for processing, packing, and holding of foods to prevent adulteration. These regulations provide that storage and transportation of food be done under "conditions that will protect the food against physical, chemical and microbial contamination, as well as against deterioration of the food and the container."

FDA Actions

Since reports about backhauling garbage in food trucks surfaced last year FDA has been working with industry to resolve the potential problems relating to backhauling of both garbage and hazardous materials in trucks also used to transport food. Many of the liquid food processing industries already have established procedures for the cleaning of tankers used to transport their product. (For example, the Interstate Milk Shippers Program, which is a joint program between FDA and the states, establishes mandatory cleaning procedures and recordkeeping requirements for the transportation of milk.) The trade associations for the tank truck and food industries are in the final stages of drafting and adopting guidelines for assuring that food in tank trucks will not become contaminated. These guidelines will cover visual inspections of the tanks, hoses, seals and other equipment for suitability, cleanliness and condition, verification of previous loads carried by a particular conveyance, and procedures and

materials for cleaning the tanks. Guidelines covering other types of food transportation vehicles are under development.

In FY 89 FDA's Mid-Atlantic Region instituted a three phase plan to determine the scope of the garbage backhauling problem. Phase one involved a coordinated inspectional sweep at three locations: Wilmington, Delaware, and Pittsburgh and Philadelphia, Pennsylvania. These locations have a large number of food transport vehicles, carrying commodities vulnerable to adulteration, that could be inspected in a way most likely to expose a problem. These investigations were done at large cold storage facilities and warehouses. The inspections were jointly conducted by FDA, USDA, and state agents, thus, combining the inspectional authority of the FDA with the embargo authority of the other agencies.

During the sweeps, a total of 130 food transportation trailers were inspected, and over 50 truck drivers were interviewed. No evidence was found at that time that any food had become adulterated by the previous transport of garbage or solid waste in the vehicles. However, two of the truck drivers did admit to having hauled solid waste in the past.

The second phase involved cross-matching lists of garbage haulers and food haulers derived from Phase I investigations. USDA inspectors visited dump sites in eastern Ohio, interviewed drivers and gathered the names of trucking companies and identification

numbers of the trucks delivering waste to the dumps. This information was provided to FDA, which then cross checked the data against lists of food haulers, licensed waste haulers and general trucking firms that carry all types of cargo. This phase provided additional data that hauling of solid waste and food products by the same vehicles did not appear to be a widespread practice.

The third phase of the operation was to consider compliance reviews and necessary regulatory action against violations discovered during the first two phases. However, since no incidents were found of food becoming adulterated because it was transported in trailers that had actually hauled garbage or solid wastes, no regulatory actions resulted from this effort.

Conclusion

The jurisdictions and expertise of many agencies, including the Department of Transportation, the Interstate Commerce Commission, Food and Drug Administration, Environmental Protection Agency, and United States Department of Agriculture are involved with the potential problems of backhauling. Thus, any legislation should be consistent with the roles that these agencies are statutorily assigned to prevent conflicts with existing laws and regulations and to fully utilize the expertise of each agency. It is not clear that S. 1751 and S. 1904 do this.

While FDA appreciates your concern for preventing contamination of

foods caused by use of the same vehicle to transport food after it has carried chemicals or waste, our investigations have not found evidence that the public health is being compromised. Nonetheless, the trucking and food processing industries are working together and with FDA to develop guidelines and standards to prevent such a problem from occurring. FDA believes that it has authority under FDCA to address potential adulteration situations that may occur as a result of the handling of food. In addition we believe that close cooperation between affected agencies is an effective way to ensure the safety of food cargoes transported in motor vehicles. For these reasons, the Department of Health and Human Services does not support enactment of these bills. FDA will continue to work with the food industry and coordinate activities with other Federal agencies to address this concern as it continues its own surveillance and regulatory strategies under the FDCA.

I appreciate the opportunity to express FDA's views in this issue and will answer any questions you might have.

Senator EXON. Mr. Lake, thank you very much.
Dr. Horne.

STATEMENT OF WILSON S. HORNE, D.V.M., MEAT AND POULTRY INSPECTION OPERATIONS, FOOD SAFETY AND INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

Dr. HORNE. Thank you, Mr. Chairman.

My name is Wilson Horne. I am Deputy Administrator for Meat and Poultry Inspection Operations, Food Safety and Inspection Service of the U.S. Department of Agriculture.

I appreciate this opportunity to testify today about problems associated with the backhauling of waste in trucks that might also be used for transporting food.

As the agency within the U.S. Department of Agriculture responsible for ensuring the safety and wholesomeness of meat and poultry products, we, in the Food Safety and Inspection Service, share your deep concern about this issue.

The problem of excess waste is not an easy issue to resolve. It appears that we, as a Nation, are approaching the point of creating more trash than we can dispose of in a safe and environmentally sound manner.

Our responsibility is with meat and poultry, and not with the vehicles that transport these products. However, FSIS has the authority to inspect trucks or other means of transportation for meat and poultry products primarily at the slaughterhouse or packinghouse door. Most meat and poultry products being shipped today are pre-boxed or otherwise packaged.

We have inspectors in every federally inspected meat and poultry plant in the country to carry out inspection laws. They use their eyes, nose, sense of touch, and good judgment to inspect trucks prior to loading.

Federally inspected product is to be loaded only in suitable and clean cars, trucks, or trailers. As a minimum requirement, the transport vehicle is to be constructed to assure protection of the product against weather conditions and road contamination.

The vehicle must be free of objectionable odors and foreign materials, such as fat, grease, trash, and dust.

Vehicles hauling exposed products, such as hanging sides of beef, must conform strictly to rigid sanitation requirements similar to those of any immediate container that would surround the meat or poultry.

All interior surfaces must be clean and intact, and closing the doors must produce a dust-free seal.

Our authority extends over the transport equipment only as far as the loading or unloading of the product at federally inspected meat or poultry establishments. FSIS has limited authority once product is in transit.

For instance, if a truck is involved in a breakdown or an accident, our compliance staff may monitor whether the product is properly unloaded and reloaded from one vehicle to another. However, this type of action away from a Federal establishment occurs only if there is a reasonable cause to suspect some sort of contamination or food safety danger.

We have no authority over a transport vehicle between the time product is delivered to its end destination and when the vehicle is again presented for preloading inspection at a meat or poultry establishment.

FSIS has taken several steps to heighten awareness of the backhauling problem.

We are working within our agency, with meat and poultry transporters, and with other Federal and State agencies. There have been no confirmed incidents of adulteration of meat or poultry or other foodstuffs attributed to this practice. Nevertheless, Secretary Yeutter is very concerned about this issue and has coordinated an ad hoc inter-departmental group to evaluate the situation.

As yet, we have not been able to develop an estimate of how widespread the practice is nor the rate of incidence.

A study conducted on the *Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials* noted there were only a small number of joint use contamination incidents involving hazardous material transportation. Of the 23 incidents cited, only one concerned meat, and was only an anecdotal, undocumented incident.

While the health risk from these practices may not be quantifiable at this point, we are, nevertheless, concerned about the potential for a food safety problem. There is no reason to haul garbage in refrigerated trucks, and if a refrigerated truck pulled up to a waste loading site, that should be a clear sign to the operator that the truck is used for hauling food.

Both S. 1751 and S. 1904 place the responsibility for corrective action with the Department of Transportation. USDA would, therefore, defer to that agency for specific comments.

Congressman Clinger mentioned earlier this morning an anonymous tip alleging a refrigerated meat truck being denied access to a landfill because it contained hazardous waste. We, in USDA, immediately investigated this at the landfill and at the meat company named, and, despite full cooperation from both of these organizations and extensive review of records, we could not confirm any of these allegations.

Mr. Chairman and Members of the Subcommittee, I appreciate your allowing me this time to testify and I welcome any questions.

[The statement follows:]

Statement by
Dr. Wilson S. Horne
Deputy Administrator for Meat and Poultry Inspection Operations
Food Safety and Inspection Service
United States Department of Agriculture
Before the
Surface Transportation Subcommittee
of the
Committee on Commerce, Science and Transportation
United States Senate
March 1, 1990

Thank you Mr. Chairman.

As a Deputy Administrator of the Food Safety and Inspection Service (FSIS), I appreciate this opportunity to testify today about potential problems associated with the backhauling of waste in trucks that might also be used for transporting food. As the agency within the U.S. Department of Agriculture responsible for ensuring the safety and wholesomeness of meat and poultry products, we in FSIS share your deep concern about this issue.

Our agency's responsibility for meat and poultry and meat and poultry products, and the Agricultural Marketing Service's responsibility for eggs and egg products represent the extent of USDA's food regulatory authority. All other foods are regulated by the Food and Drug Administration.

The problem of excess waste is not an easy issue to resolve. The incident a couple of years ago with the "homeless" garbage barge that left New York and searched up and down the East Coast and throughout the Caribbean for a place to unload is a perfect example of how far we have to go.

It appears that we, as a nation, are approaching the point of creating more trash than we can dispose of in a safe and environmentally-sound manner.

As an example, FSIS compliance officers talked last fall with officials of the New Jersey Department of Environmental Protection about the backhauling of waste. We were advised that New Jersey needed to dispose of 11 million tons of solid waste last year, but because there is not enough room in state landfills or other disposal sites, over half of that waste must be transported out of state for disposal. Each day, roughly 900 to 1,000 trucks in New Jersey alone are carrying waste to other states.

CURRENT REGULATIONS

Under current regulations, FSIS has the authority to inspect trucks or other means of transportation for meat and poultry products only at the slaughter house or packing house door. Under 9 CFR Sec. 325.1 and 381.190, FSIS requires that transports be free of chemical residues and any foreign matter, such as dust, dirt, rust or other residues.

We have inspectors in every federally inspected meat and poultry plant in the country to carry out inspection laws. They have the authority to reject trucks for transport of meat and poultry. The only practical tools the inspector has to determine what was previously hauled in the truck are his or her eyes, nose, sense of touch, and good judgment.

In the FSIS Sanitation Handbook, the guidebook sent to all meat and poultry inspectors in the field, as well as to plant management, directions are given to inspectors as to acceptable conditions. The handbook specifically states that product is to be loaded only in suitable and clean cars, trucks or trailers. As a minimum requirement, the transport vehicle is to be constructed to assure protection of the product against weather conditions and road contamination. The vehicle must be free of objectionable odors and foreign materials, such as fat, grease, trash, and dust. The handbook also notes that vehicles hauling exposed products, such as hanging sides of beef, must conform strictly to rigid sanitation requirements similar to those of any immediate container that would surround the meat or poultry. All interior surfaces must be clean and intact, and closing the doors must produce a dust-proof seal.

Our primary responsibility is with the product and not the vehicle. Our authority extends over the transport equipment as far as loading or unloading of the product at federally inspected meat or poultry establishments. FSIS does have limited authority once product is in transit. For instance, if a truck is involved in a breakdown or an accident, our compliance staff may monitor whether the product is properly unloaded and reloaded from one vehicle to another. However, this type of action away from a Federal establishment occurs only if there is reasonable cause to suspect some sort of contamination or food safety danger.

FSIS INITIATIVES

FSIS has taken several additional steps to heighten awareness of the specific problem of backhauling garbage in trucks used to transport meat and poultry. We are working within our agency, with meat and poultry transporters, and with other Federal and State agencies.

On June 20, 1989 a notice was sent to FSIS inspectors-in-charge at every plant alerting them to reports of this waste backhauling practice, and directing them to advise managers and operators of meat and poultry plants of the risks associated with the practice. They were also directed to carefully inspect vehicles presented for loading. I will submit a copy of this memo for the record.

FSIS also sent letters to 22 transport company associations around the country alerting them that backhauling waste in meat and poultry transports presents risks of product adulteration. The letter mentions the potential criminal and administrative penalties a carrier might face if these practices caused products to become adulterated. I would also like to submit that letter and the list of recipients for the record.

Jim Johnston, President of the Owner-Operators Independent Drivers Association of America advised us that our message was included in one newsletter mailed to 10,000 members and in another newsletter distributed to approximately 80,000 truckers. In addition, the Western States Meat Association included a notice of our letter in a newsletter to their members. I am submitting a copy of Mr. Johnston's response and the Western States newsletter for the record.

Some firms have taken action on their own. Campbell Soup Company sent a strongly-worded letter in early June to the approximately 50 trucking firms used by the company. Campbell Soup said it would not tolerate this practice under any circumstances and would do business only with carriers who provide equipment to Campbell that has not been used for backhauling wastes. The company asked each firm to sign and return a letter stating they do not and will not engage in these backhauling practices. The general response from trucking firms is that they are encouraging their truckers to observe safe food hauling practices.

Cooperative efforts with other agencies have also been productive. On June 28, FSIS, FDA and Pennsylvania officials conducted unannounced, random checks of trucks unloading meat, poultry and produce at the Philadelphia Food Center. On July 9, another review was conducted at the same place. Over 100 trucks were inspected, and on both occasions, no actionable violations were found of any FSIS regulation, the Food, Drug and Cosmetic Act or Pennsylvania law. We are continuing to cooperate with FDA and State officials to monitor for any possible problems.

There have been no confirmed incidents of adulteration of meat or poultry or other foodstuffs attributed to backhauling. Nevertheless, Secretary Yeutter is very concerned about this issue, and has coordinated an ad hoc interdepartmental group to evaluate the situation. This group includes representatives of the Food and Drug Administration, the Interstate Commerce Commission, the Department of Transportation, the Environmental Protection Agency, and, within USDA, FSIS and the Office of Transportation. We have not been able, to date, to develop an estimate of how widespread the practice is geographically or the incidence of this type of joint use of trucks. We do know--and I must stress this--there have been no confirmed incidences of adulteration of meat or poultry or other foodstuffs attributed to this practice.

LEGISLATIVE RESPONSE

Congress has a very difficult job ahead in determining the best course to take to correct these problems. As you know, a study was done on a related issue in 1987. The Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials noted there were only a small number of joint-use contamination incidents involving hazardous material transportation. Of the 23 incidents cited, only one concerned meat, and it was only an anecdotal, undocumented incident.

While the health risk from these practices may not be quantifiable at this point, we are, nevertheless, concerned about the potential for a food safety problem.

There is no reason to haul garbage in refrigerated trucks, and if a refrigerated truck pulled up to a waste loading site, that should be a clear sign to the operator that the truck is used for hauling food. Most meat and poultry products are hauled in refrigerated trucks, and that is what we are most concerned about.

Both S. 1751 and S. 1904 place the responsibility for corrective action with the Department of Transportation. USDA would, therefore, defer to that agency for specific comments.

CLOSING

Mr. Chairman and members of the Subcommittee, I appreciate your allowing me this time to testify. Government's role in attempting to solve the larger problem of waste disposal--whether it is municipal waste or toxic waste--is a difficult one.

As far as backhauling waste in trucks that haul meat and poultry products, however, I assure you that we in FSIS and USDA will continue doing our part to strictly enforce our regulations.

Thank you again and I would welcome any questions you might have.

Senator EXON. Thank you very much.

Let me ask you this question, Mr. Lake and Dr. Horne.

In your agencies, how many inspectors do each of you have that would address the problem and subject of this hearing this morning? Do you think whatever that number is that it is enough?

Mr. Lake.

Mr. LAKE. Well, as you may know, Mr. Chairman, FDA only has 750 investigators nationwide to do all of the surveillance work in the food, drug device and cosmetic industries. We try to use the limited number of investigators that we have available to do food work, in the areas where we feel we can get the biggest "bang for the buck." Therefore, we have not devoted as much attention to the transportation side as we would like to. On the other hand, up until fairly recently, we really did not have any particular reason to believe that was a big problem.

Senator EXON. So your agency has really not done a whole lot in this area, right?

Mr. LAKE. That's correct.

Senator EXON. Dr. Horne.

Dr. HORNE. Yes, sir. We have about 7,000 plants under Federal inspection throughout the country, and we have about 7,500 inspectors and veterinarians who cover those plants. There is an inspector and/or a veterinarian in every plant every day that they operate.

We do have authority over trucks as they load, and we do take particular caution about those trucks. However, we do not inspect every single truck.

We have the right to do that, but we don't do that routinely.

Senator EXON. Since this matter came to the attention of the department—and I assume it has—have there been any programs initiated to devote more attention to the trucks that are used to transport the products that have been inspected in the plant?

Dr. HORNE. Yes, sir.

Last summer, when this all broke, we sent letters to all of our inspectors in charge in every single plant advising them of this

problem and also advising the managers of these plants to be on the alert for any trucks that may have been hauling undesirable material that also wanted to haul their meat or poultry, and also advising them of the pitfalls of this as far as the truckers were concerned.

We also notified trucking companies. We had a list of 22 trucking outfits. We sent letters to them advising them of these problems. As a result of that, at least one company responded by sending it to 10,000 of their immediate members and an additional 80,000 truckers got notice of this.

So we have sent out quite a bit of notice on it.

Senator EXON. Of course, your inspectors working at a poultry processing plant, for example, would have no way of knowing what that truck hauled before it backed up to that loading dock, would they?

Dr. HORNE. That's right.

Senator EXON. Are they trained in the areas of smell, feeling, and observation? What are their specific instructions with regard to inspection of the interior of a truck that poultry is about to be loaded into?

Dr. HORNE. We have a Sanitation Handbook that we have issued to all inspectors. They also go through a minimum amount of training when they first come into the Department, and then periodic training.

They are instructed on how to detect problems, where they might be, the type of trucks that they are involved with. They can use and they are very adept at using their sense of smell and feel and at being able to look. They know where to look for the problems, and they know what to smell for, quite frankly.

Senator EXON. Isn't it true, Dr. Horne, that, by and large, your inspectors have been internal inspectors in the plant, rather than paying a great deal of attention to the vehicle that the material that they approve as meeting standards inside the plant goes into, that is, as against when the food goes out the door?

Dr. HORNE. Yes.

Most of our efforts are within the plant involving the product itself. We inspect every single bird and every single animal that goes for slaughter. We are talking about 5.6 billion birds and about 73 million animals.

We inspect every one, and it obviously takes up the majority of our time.

But in a case like last summer, when we recognized the problem with trucks, we make the effort and take the time to inspect these trucks, in addition to what we would normally do.

Senator EXON. You have 7,000 inspectors. Do you think that is a sufficient number?

Dr. HORNE. Yes, sir. It has served us very well. I would not refuse more, though. I would be happy to have more.

Senator EXON. I would be surprised if you had said otherwise, Doctor.

Mr. Roberts, you have listened to testimony by Mr. Lake and Dr. Horne. Does this give you any more pause with regard to possibly better coordination and cooperation? I got the impression from your testimony that the Department of Transportation would best

keep a hands-off attitude on this matter because it belongs in other agencies.

When I listened to the testimony of Mr. Lake and Dr. Horne, I was wondering what was going through your mind when they said what they did.

Mr. ROBERTS. First of all, Mr. Chairman, I would not characterize it as a "hands off" attitude. What we are strongly recommending is that we are not assigned statutory authority to regulate in this area.

Let me characterize it in this way. To us it is a systems issue. It is not just dirty trucks. If somebody is willing to take boxes of chicken, for example, and put it into a dirty truck, the first thing I want to look at is the dock and the working facility around which that chicken is handled going into the truck.

I would suggest if they are using a sloppy truck, then they are using a sloppy dock. So it is a systems approach. We think the agencies that have the people on the premises—and I understand the point about where the primary effort is—should put the conditions of loading within the purview of their inspection program.

Again, I just do not think that the Department of Transportation should start out and attempt to hire the same types of expertise—which would be very difficult to do, I might add, and there is no suggestion of new resources to carry this out—that the Department of Transportation start from scratch in a regulatory area that is already addressed by two Federal agencies.

I agree with you that we need to coordinate.

Let me give you an illustration. In 1970, I formed an interagency coordination group on explosives. We had a number of different agencies involved in this. The interagency group still meets four times a year, and it is currently chaired by the Bureau of Alcohol, Tobacco, Tax, and Firearms. We come together and discuss, at the management level in Washington, mutual issues involving the safety of explosives, not only in transportation but also in storage and its entire environment.

I do agree that we need to do something like that in this area so that we can better coordinate our resources.

I was an inspector in Iowa in 1960, and at that time I saw some practices involving the hauling of food that were outside the jurisdiction of the Interstate Commerce Commission, which was charge with motor carrier safety in those days, and through the Iowa Highway Patrol, we brought it to the attention of the State authorities when we saw what we thought to be an unsafe food transport practice.

I did see those kinds of things when I was an inspector. What we need to do is to funnel that information to the right authority for appropriate action.

Senator EXON. I understand your concerns in this area, I guess, as far as your department is concerned. That is one of the reasons we held this hearing, to see what those who were in charge or not in charge of what we think should be done would come here and tell us what they believe should be done.

Let me ask you this question. Would you think that there maybe should be better coordination between your department and that of

Mr. Lake and Dr. Horne as far as them reporting to you for necessary enforcement where they find discrepancies?

Mr. ROBERTS. No, sir, because the regulatory authority and the regulations that would be discovered violated would be those of those two agencies. We are not suggesting that the Department of Transportation create a new body of regulation in an area already held by those agencies.

That is the point. To us, it is a systems issue that involves food safety, from where it is processed into the plant, moving it into the vehicle and off the vehicle, and a new agency should not be brought to bear on it, other than on a cooperative basis, working with the other agencies.

Senator EXON. Well, then, you seem to think, Mr. Roberts, that these other two agencies, who have some very direct responsibilities, should also expand their ability and authority, if they don't have it under present law, to get into the interstate movement of these commodities which, generally speaking, transportation-wise, it seems to me would come under the Department of Transportation.

Mr. ROBERTS. Sir, we are not talking about the transportation jurisdiction. It is the authority of the agencies, and I think you will find that the authority of those two agencies is rather broad. But I certainly would defer to them to give you any information concerning deficiencies in their authority.

I also mentioned earlier that one of the things I did as an inspector was refer it to a local State agency because in that particular circumstance, it was recommended that we do it that way because we could get a faster action in that particular circumstance at the local level with the State.

Again, I don't want to beat this point to death, but it is assigning new statutory authority to an agency that would overlap the authority held by two other agencies. That is the point, and we don't think it is necessary.

As I said in my testimony, we do not have the resources in our existing staff to deal with this subject.

Senator EXON. Well, the last thing I think any of us wants to do is to create more bureaucracy or more overlapping of agencies, unless that is necessary to address this problem.

My time is up, but could I ask Mr. Lake and Dr. Horne to comment just briefly on the question that I just directed to Mr. Roberts.

Do you feel that you have enough expertise and personnel to do the job that I think you clearly get the impression that we think should be done in this particular area of backhauling garbage and hauling food back?

Are you satisfied with the present arrangement? Do you think you have the wherewithal, the authority, and the personnel to get the job done, or do you think you would need more cooperation from the Department of Transportation?

Mr. LAKE. Let me address that first.

There are two things. You actually asked several questions. Let me try to hit them all.

First, insofar as FDA is concerned, the answer to your question of do we have adequate expertise, I think we clearly do.

Resources are a problem with us, as they are with the Department of Transportation. I think, in terms of coordination, all of the agencies could perhaps have more interaction, more cooperative efforts to exchange information, et cetera, than we have done in the past. As a result of the reports that occurred last year, we, in fact, have had a lot more interaction amongst ourselves and between the Federal agencies and the regulated industries as well.

So, there are some things that can be done and that have been done in terms of additional interaction.

At the same time, though, my impression from what I am hearing is that the expectations probably go beyond anyone's authority or resources to handle.

Senator EXON. Thank you very much.

Dr. Horne, do you have anything to add?

Dr. HORNE. Yes.

I would agree that we probably need to coordinate our efforts more. For instance, in the past, if we should reject a truck for whatever reason, if it were unsanitary for whatever reason, we'd just reject that truck. We did not report that to any other agency. Perhaps that is something we need to work on.

We really have no way of knowing where these trucks come from. So our inspectors concentrate only on the food product, the meat and poultry. We just look at the truck to see that it is adequately clean to accept that product. But I think if we do find problems, we probably should be sharing that more with other groups.

Senator EXON. Thank you, Dr. Horne.

Senator Gorton.

Senator GORTON. Mr. Roberts, I want to read two key sentences in your testimony. You say on page 6: "We are opposed to the creation of the additional statutory authority called for in these bills. We believe the existing authority under the Federal statutes referenced earlier is adequate to regulate the handling and transportation of food."

I have to tell you that I think that position, that testimony, is absolutely bizarre. It seems to me that it can only be triggered by one of three or four attitudes toward the subject matter of this hearing today. Maybe you can tell me which one it is.

Perhaps you're telling me that this does not happen, that the reporter got it all wrong and, in spite of what the driver told him, this kind of practice does not take place in the United States.

But maybe what you are really saying is that it is perfectly all right if it does happen. It doesn't bother you that we'll carry chemical resins and then, without washing out the trucks, put in orange juice concentrate or something like that. Maybe that is what your testimony means.

Maybe you are saying that you don't care one way or another because it would be too much of a bother to take care of a situation like this.

Finally, perhaps what you are telling me is that it won't do any good for us to pass the statute because you won't enforce it.

Which one of those leads you to the position that nothing should be done by Congress?

Mr. ROBERTS. Well, sir, I think that maybe we could clarify what we are saying, that the newest statutory authority, as assigned to

the Secretary of Transportation, is unnecessary. If the other two agencies—and I don't believe they pointed this out—point out that they have a deficiency in their existing statutory authority, certainly we would support clarification of their current authority, or amplification of it, if that is necessary.

We are not suggesting that we would not enforce any law. This is way down the stream. We would have to discuss it with the Congress in terms of its resource implications. We have not even raised that to any degree.

I certainly don't want to leave this hearing having given you the impression that we are objecting to the overall purpose of this proceeding. That is not the case.

The easiest thing in the world would be for me, as the manager of a major transportation program, to come in here and say yes, we'll do it. The question is, really, are we the correct agency to accomplish this, taking it into account from a system standpoint, and I hope we are looking at it from that standpoint, concerning the safety of food.

Senator GORTON. But that is somewhat different from what you have said.

As I read your testimony, you said you were opposed to the creation of additional statutory authority and that we believe there is enough right now.

Well, then you are just saying that you or someone else is ignoring current law, so it doesn't do any good to pass any new law.

I picked on you only because it seems to me there is a shell game going on here. The FDA testimony says the FDA believes it has the authority under FDCA to address potential adulteration situations.

Evidently you don't believe that there needs to be a new law and that everything is okay.

Mr. ROBERTS. No, sir, I don't.

Senator GORTON. Dr. Horne doesn't have any testimony on that at all. I will say, unfortunately, the Interstate Commerce Commission is not here in person, but the Interstate Commerce Commission has submitted testimony.

It says, interestingly enough, that the Commission concludes that an ample record of problems exists to support the passage of either S. 1751 or S. 1904.

So at this point we have four different agencies of the Federal Government saying four quite distinct things, and mostly it seems to me you say count us out as the Department of Transportation.

Now, that is a rather novel position for someone in the Federal Government. Usually they like to have new authority, rather than to get rid of it.

Would you prefer it, because of your fear of new statutory authority, that we simply banned this kind of dual transportation in its entirety and allowed for no exceptions? Both Senator Gore and I felt that there ought to be a presumption against it, but that someone should be able to make a decision that particular types of backhauling created no damage whatsoever and wanted to allow the Department of Transportation to make such determinations.

Would you be more comfortable if we dropped that out and just said put a sticker on your truck and it can only carry one thing?

Mr. ROBERTS. Senator, we have to divide this into two parts. One is who holds the statutory authority to regulate. The other is who holds the authority to inspect or carry out these mandates. They could be different.

For example, we could be mandated to work with these other agencies in terms of exchanging information with them when we see practices in our inspection program. I have 16 inspectors under my supervision right now. Then we have to talk about the resources of Federal highways or Federal railroads or the other agencies of the department who have inspection capability.

I am not here debating the adequacy of the inspection staff level at FDA or USDA. I am not doing that. That is a judgment and a presentation that they must make.

We are talking about duplication of effort, if you will, in terms of us starting a new regulatory program in DOT, where there are already two agencies involved in regulation in the same area, including Transportation, transportation vehicles, and we don't think it is appropriate to enter into a duplication of a statutory role.

That is the point we made in our statement. I am sorry if it is misread.

We read the existing authority of these two agencies as being broad enough to address the issue.

Senator GORTON. One thing seems obvious. The three of you and the ICC certainly did not exchange thoughts before you came up here to testify. If you weren't even able to do that, why should we feel confident that you are going to get together any better in solving this problem under present statutory authority?

Mr. ROBERTS. Sir, I don't know the basis for the ICC comments. You are correct in that I, myself, did not talk to the ICC recently, since the hearing we had at the House. We have had discussions with the two cognizant agencies. I don't know how the ICC draws that conclusion and I don't know if they seriously examined the testimony of the other two agencies or their statutory authority in drawing that conclusion. I just don't know that.

Senator GORTON. Anyone else?

Mr. LAKE. I don't know the answer to that question, either.

Senator GORTON. Well, I have exhausted myself with this set of witnesses, Senator Gore. Why don't you try them out?

Senator GORE [presiding]. Well, I have heard you have done a great job. I was necessarily absent for a few minutes. But let me ask only some brief followup questions.

First of all, when Congress introduced the Motor Carrier Safety Program several years ago, one of its aims was to adopt uniform Federal safety regulations in the trucking industry that could be uniformly enforced throughout the entire country.

Why wouldn't the participation of the Motor Carrier Safety folks in enforcing decontamination requirements help achieve this same goal, particularly in terms of checking shipping documents, which would include check-lists to guard against the kind of backhauling practices we have heard about here today?

Mr. ROBERTS. Senator Gore, while you were out of the room I mentioned that we acknowledge, I think, that we, as agencies, should work more closely together in coordination of some of these activities. That is acknowledged.

I think the remainder is a policy call, if you will. The Motor Carrier Safety Program and the Motor Carrier Safety Assistance Program, which involves substantial sums of money out of the Highway Trust Fund, is addressed to an attempt to reduce or engage in a reduction of several thousands of lives lost in commercial motor vehicle operations, I mean, where we have an identified consequence from commercial motor vehicles.

The question is how much of that resource and how much time in that area of motor carrier safety on the public highways would be diverted to this activity.

That is a policy call. Obviously it is a matter that should be discussed.

I don't think there is any disagreement that some information should transfer from those people when they observe a practice that is contrary to Federal regulation of another agency.

I also pointed out that years ago we had done that type of thing and we should do more of it, obviously.

Senator GORE. Well, I am going to pursue this with Commissioner Keith Bissell, who is going to be testifying in a few moments. But it seems to me that you really have to be involved, for the same reasons that the original program was authorized.

Let me ask the other witnesses this question.

Some individuals concerned about backhauling have suggested that Congress impose mandatory insurance requirements for the bulk transporters of food products to maintain safety and quality control.

What is your reaction to that? What effect would this requirement have on the industry and on independents? Do you have any reaction to that?

Mr. LAKE. I think from the standpoint of the FDA, we would have to see the specific proposal. I know that, I haven't seen any language, so I don't really know what is being contemplated.

Senator GORE. All right.

Does anybody else have a comment?

Dr. HORNE. My immediate reaction would be what would trigger a suit or a claim, and if we got into a situation where the inspectors were denying access to a truck, if that would automatically trigger a suit, then we might have some problems. We would have to have some pretty strict guidelines as to what would deny access to a truck.

Senator GORE. The essential point, Mr. Chairman, that I wanted to make with this panel is one that I made in my first intervention and one that has been pursued in questions by Senator Gorton, and that is this. If the waste and the food are going to be mixed up in the same containers, then the response has to involve a number of different agencies. People would never anticipate that haulers would not exercise the kind of common sense and due diligence one would expect to prevent this kind of reprehensible practice. But if they have crossed that line and if the problem does exist, and it does, then we are going to have to cross some jurisdictional lines also. This means a new kind of cooperation between different agencies. It means a new role for some agencies unfamiliar with dealing with this kind of problem, and it means the kind of cooperation be-

tween the Executive Branch and the Legislative Branch that is necessary to solve this problem.

I guess I don't really understand the reluctance, but I do understand where it comes from. It has to be overcome and we are going to proceed as if you all are enthusiastically on board on this, because if you are not enthusiastic, you are going to have to fake it.

This is because we are determined that this is going to be done.

Thank you, Mr. Chairman.

Senator EXON [presiding]. Thank you very much, Senator Gore.

I have just one last question and then we will thank this panel and dismiss it. Senator Gore has requested that, since Commissioner Bissell is here now, we have his testimony following this panel's being excused.

The question that I have I think would be best directed to you, Mr. Lake.

What kind of chemical sampling, if any, does your agency do on a truck that foodstuffs are being loaded into? You have testified that they can use smell and taste and what they see. Have they ever done any scraping on the sides of the truck or the lining of the truck and submitted those samples for chemical analysis? Do we ever go that far, or is it pretty much a hit and miss proposition of looking and smelling?

Mr. LAKE. Well, in addition to observations of the sort you are talking about, yes, we do take samples. In fact, that is a big part of the activity that the FDA is engaged in.

Senator EXON. You take samples of what?

Mr. LAKE. Of the food itself and analyze it.

Senator EXON. Forget the food. Forget that. Let's assume that you have done an adequate job, which I think you do in most instances, as far as I can tell. What I am talking about is the food has now left the plant and you have given your seal of approval on it, whatever it is. But now it is going into a truck. That is what we are talking about.

My question has to do with how thorough are the inspections on the vehicle that this food is loaded into? I said scrapings. Is there anything you do other than see and smell?

Mr. LAKE. I think, generally, the answer to that would be that, while our inspectors would look at a truck on site, visually, we would not on an empty truck take samples unless we actually saw something that aroused our suspicion. Then, in that instance, they would collect a sample of that.

Again, if I may, just to emphasize the point of our statutory authority, it really focuses on the food itself. Consequently, the samples that we ordinarily take——

Senator EXON. Aha. So you sample the food itself and the rest of it is an afterthought.

Mr. LAKE. Well, I don't know if I would say that it is an "afterthought." But that is the principal focus. And, occasionally, we do find contaminants in food, whether from transportation or otherwise. When we do find such contamination, we take action.

Senator EXON. Has there ever been a case, to your knowledge, when your agency or any of your inspectors have ever taken scrapings from the inside of a truck, whether they thought they saw

something that made them question that and submit it for chemical analysis?

Mr. LAKE. I am being advised here.

Senator EXON. I understand.

Mr. LAKE. Actually, I am being reminded of a situation a few years ago in which we had a concern about microbiological contamination of some ice cream, where we did, in fact, take some swabbings of trucks to look for listeria.

Senator EXON. What was that, with regard to what?

Mr. LAKE. It's listeria, a contamination of ice cream with listeria monosotogenes, which is a pathogenic organism.

Senator EXON. And when was that?

Mr. LAKE. That was in 1988.

Senator EXON. Has there been any similar check since that you know of?

Mr. LAKE. There probably has been, but I cannot cite specific examples.

Senator EXON. Would you submit for the record any additional findings that you could identify in that area to give us some perception of what is being done or not being done in this area?

Mr. LAKE. Yes, sir.

[The following information was subsequently received for the record:]

FDA Inspections of Truck Interiors

FDA procedures require investigators to apply the same standards to railcars and trucks as are applied to food warehouses. The Agency considers these vehicles as "warehouses on wheels." Thus, these vehicles are accorded the same inspectional scrutiny as typical storage, processing, and manufacturing firms, including the routine collection of exhibits and environmental samples which could be indicative of unsanitary or objectional conditions. FDA investigators routinely inspect trucks and railcars being loaded or unloaded during an inspection at a regulated firm. Any suspicious circumstances are further scrutinized for possible contamination. However, FDA does not maintain separate records of the truck or railcar inspections conducted during the course of a routine food safety inspection. There are no records of specific incidents of FDA sampling the insides of a vehicle during a routine inspection, however, this occurs on an as needed basis. In 1989, the Agency conducted a total of 5,682 inspections.

In addition, the FDA inspects the contents of trucks based on information received or complaints that the food contents may be contaminated or adulterated. In one instance, FDA collected samples from a truck carrying ice cream in order to test for a pathogenic bacteria, listeria monocytogenes. In another instance, after receiving complaints from Canada that tankers carrying orange juice had not been properly cleaned prior to loading the orange juice, our Seattle District Office collected and analyzed samples from some of the tankers. None were found to be contaminated or adulterated.

Last year, in response to allegations by the news media, that trucks used to transport food were also used to transport solid waste, the FDA Philadelphia District Office, in conjunction with the USDA and the Pennsylvania Department of Agriculture, designed an inspectional approach to investigate the depth of the problem. A total of 130 transport trailers were examined in two coordinated inspectional operations at food distribution centers in Wilmington, Delaware and Philadelphia and Pittsburgh, Pennsylvania. Only five trailers were found to be in less than acceptable condition. In these five instances, the problem appeared to be inadequate cleaning between loads of food items, not from previous loads consisting of solid waste.

Senator EXON. Thank you very much, panel, for your contributions to our discussion of this this morning. You are excused.

At the request now of Senator Gore, I am very pleased to call on Commissioner Keith Bissell, from the Tennessee Public Service Commission.

Would you please come forward, Mr. Bissell.

We understood from the explanation of Senator Gore that you were voting. We are called on from time to time for votes here in the United States Senate. We do appreciate the fact that you were unavoidably detained. We are very pleased to recognize you and ask for your statement at this time.

If you have a prepared statement, we will include that, without objection, in the record.

I will ask you to summarize and then we will have some questions.

STATEMENT OF KEITH BISSELL, COMMISSIONER, PUBLIC SERVICE COMMISSION OF TENNESSEE, CORDELL HULL BUILDING, NASHVILLE, TN

Mr. BISSELL. Thank you, Mr. Chairman, Senators. It is a great deal of pleasure for me to be here today as Chairman of the Tennessee Public Service Commission and as a member of the National Association of Regulatory Utility Commissioners, and as past Chairman of the Transportation Committee of NARUC for the past three years.

We at NARUC are made up of State agencies that regulate transportation companies and public utilities across the country. As a matter of fact, we made some 2 million safety inspections last year of trucks, with some 3,000 inspectors. So we are very interested in this problem.

The backhaul problem is one that has, I am sure, been clearly defined here today in previous testimony and statements. We are very concerned about that.

We, at NARUC, took up the question of the backhaul problem and NARUC has endorsed legislation that would address this problem. We focused on and specifically endorsed the Gore Bill.

One reason that we thought that that was the appropriate way to go is, while this is a serious problem, the ability to effectively control this problem is in enforcement. In the Gore Bill, the enforcement mechanism, the principal enforcement mechanism, is vested in the Motor Carrier Safety Assistance Program, the funding mechanism that comes from the Federal Government down to the State inspectors, where these 3,000 people are out there already inspecting trucks for safety.

As a practical matter, the way we could enforce this provision is when we make roadside inspections, we could check the marking of the tanker truck against the freight bill to determine just exactly whether or not that tanker is hauling what it can legally be hauling.

In our terminal audit program, which is another very important part of our safety program, we could check the cleaning of that tanker to make sure it was done properly. Here, again, we could go

also behind these transportation moves and identify what commodity was hauled in what particular container.

So I think it is a very logical way to pursue appropriate enforcement, to vest that enforcement with the State inspectors who are out there already checking trucks for safety.

I might add that we really focus, as State inspectors, on tankers and other vehicles that haul hazardous material for obvious reasons. Our Motor Carrier Enforcement people are very well trained to be familiar with and identify hazardous material commodities and know what kind of precautions need to be taken.

I think the bill calls for additional training of the inspectors from appropriate Federal agencies.

So we think that that is a very effective mechanism, again, for enforcement. That is why we focused on the Gore Bill and endorsed the Gore Bill as a national association.

One aspect of the legislation that we would note should be amended is if we, as MCSAP inspectors—and the Motor Carrier Assistance Program only partially funds our operation—if we are enforcing these provisions and it is necessary to impose a fine of up to $10,000, if a State inspector finds a violation and finds it necessary to impose a fine, then the State agency should collect that fine and retain the proceeds of that.

So, basically, we are delighted to testify in favor of this legislation.

At this time, Mr. Chairman, I will answer any questions that you may have.

Senator GORE [presiding]. Thank you very much, Commissioner Bissell.

We have had an opportunity on the Commerce Committee to hear your testimony before. It is always on target.

I personally enjoy the opportunity of working with you on a wide range of issues and really wanted to say that in personal terms.

Specifically here, today, thank you for your testimony.

Now, how many members does NARUC have?

Mr. BISSELL. There are 47 States that are involved in the NARUC and MCSAP programs specifically.

Senator GORE. And this is an organization made up of virtually all of the State regulatory utility commissioners, who are actually out there where the rubber meets the road?

Mr. BISSELL. Correct.

Senator GORE. When did the national group endorse S. 1904?

Mr. BISSELL. Today.

Senator GORE. Today. I appreciate your efforts in that regard and I appreciate your enthusiastic support of the bill.

As Senator Gorton requested of the witness from the State of Washington, I would certainly ask for your thoughts as a followup on his legislation as well as the comments you have offered here on S. 1904.

Mr. BISSELL. Certainly.

Senator GORE. Let me follow up on some questions that I wished to pursue earlier.

The Motor Carrier Safety Assistance Program is designed to achieve uniform safety regulations in the trucking industry that are uniformly enforced throughout the country.

I take it it is for that reason that NARUC is especially enthusiastic about using that approach to address this particular problem, to emphasize the check lists and the other tools with which you can enforce a prohibition against the kinds of practices we have heard about here today.

Is that essentially it?

Mr. BISSELL. That is correct, Senator.

I also might add that it is the logical way, as a practical matter, because we are already out there, pulling these trucks off for safety inspections. We are focusing on the hazardous materials, and we are doing terminal audits. So we are going to come in contact with the vehicle and the weigh bill and everything that we need to check all of this out, to enforce this law anyway. So it is just a very practical, effective way to enforce.

Senator GORE. Well, you know, confronted with this problem, one naturally thinks how are we going to respond to it. If we already have—how many inspectors is it?

Mr. BISSELL. We have some 3,000 inspectors.

Senator GORE. If we already have 3,000 inspectors all over the United States checking trucks, then it makes sense to utilize that resource in our specific response to this problem, to arm them with the tools they need to address this problem and to help the Nation solve this problem.

Now, would this participation require additional funding?

Mr. BISSELL. I really don't think so. I can't speak for NARUC, but I wouldn't think so.

You know, we are trained, our inspectors are trained in so many areas already, including hazardous material. I think this would simply be another thing that they would check when a tank truck came through. I really don't think it would be necessary to have additional funding to accomplish the purposes of this act.

Senator GORE. It is my understanding that most of these inspectors do not actually open trailers, although they are authorized to do so, unless there is a reason for suspicion.

Would it be your expectation that, armed with these new responsibilities and new tools, we would expect to see more of the containers actually opened, where a pattern is found and conveyed to these inspection forces throughout the country?

Mr. BISSELL. I think probably so.

But I would like to point out that, under the current regulations that are in effect, the identification through placarding of what is being hauled in these vehicles must be displayed on a trailer. Our people can recognize through that symbol and certain information contained on there exactly what is in there.

The other thing we can do is check that against the freight bill. I think that is another we can check to see what is in there.

Now, if we had reason to suspect it was something else, we could open the container and make a check. But I think that would have to be done only in a case where we had strong suspicion that the freight bill was fraudulent or the marking on a truck was fraudulent.

Senator GORE. Now, by imposing some tough liability for falsification of those placards and tough liability for falsifying the documents that they would have to have available for you, we provide

an additional deterrence in S. 1904. Do you believe that that is a significant deterrence, a sufficient deterrence, or is a different approach needed to supplement this?

Mr. BISSELL. I think it is sufficient. I would add, Senator, that, in addition to those checks that I have mentioned already, we often do terminal audits, terminal safety audits of trucking companies. We look at freight bills and driver records to determine how long that driver has driven without rest, and so on. We also can find through other records documentation at the terminal of what was actually hauled.

I think it is one thing to fraudulently display a placard or a weigh bill. But I think within the records of the company we could also make a check of what was actually in that truck through invoices and so on. That is another way to assure that we would have an enforcement mechanism that would be workable.

Senator GORE. I really appreciate your participation here today.

I want to say to the Chairman that Commissioner Bissell appears here not only as a member of the executive committee at NARUC, but also as a former chairman of the transportation committee there. He brings with him this morning the formal endorsement of S. 1904 by the National Association of Regulatory Utility Commissioners.

Just to recap in 30 seconds, he has made a very powerful statement of why it is good common sense to use the 3,000 inspectors that are already out there in every State looking at these trucks and inspecting these trucks and give them the tools they need to help us deal with this problem.

It is partly for that reason that NARUC has enthusiastically endorsed S. 1904.

I really appreciate you coming here today. Thank you, Commissioner.

Mr. BISSELL. Thank you very much.

Senator EXON [presiding]. Thank you, Senator Gore.

I just have two very brief questions, and I thank you for coming here, Mr. Commissioner.

I think yours is a very important part of our testimony here this morning.

In discussing this with your counterparts around the State—and I believe you are Chairman of that organization, is that right?

Mr. BISSELL. No, sir. I am the immediate past Chairman for three years of the transportation committee and a member of our executive committee.

Senator EXON. All right.

When the Gore Bill was endorsed, you must have discussed it to some extent. Did you find that your counterparts in other States were as concerned about this as you are in Tennessee? Or, to put it in another way, have they had instances that caused them concern as it has caused you obvious concern in Tennessee?

Mr. BISSELL. I found widespread concern about the general problem.

You know, very frankly, in discussions, specific instances of abuse were not mentioned. But we are generally aware of the problem through the media and we are generally aware of the potenti-

ality of the problem, the great potentiality of the problem in the industry as we know it.

Senator GORE. I might add one thing with your permission, Mr. Chairman.

The pressures for putting garbage and hazardous waste in these empty trucks and sending them somewhere else has helped cause this problem. That pressure is growing every single day.

So, whatever the extent of the problem today, you can guarantee that it is going to get worse unless we crack down on it hard.

Senator EXON. My final question, Commissioner, is one that I have asked this of other witnesses when you were not here.

Can you give us any numbers or attitudes or percentages on how widespread this problem is? For example, have you identified 10, 20, 100 such incidents in Tennessee? In other words, what I am trying to get a grip on—and if there is only one, it is still wrong—is how widespread is this practice at the present time?

Mr. BISSELL. I really don't know that. I don't think that we would know that unless we were looking for it, and it is not within our charge at this time to do that.

You know, it could be that some type of pilot program could be initiated immediately to make such a study. But in our normal process of checking trucks in various ways, we have not investigated this particular abuse.

Senator EXON. Well, there have been some incidents in Tennessee that you have found, have there not?

Mr. BISSELL. Again, Senator, we have not investigated this particular activity heretofore.

Senator GORE. Mr. Chairman, if I could interject on that point, my staff has spoken with a number of truckers in Tennessee who have told us of the problem in Tennessee; but, because of fear that they would lose their jobs, they have been unwilling to make their statements in public.

This phenomenon also appeared in Pennsylvania and in Washington State, although in Washington State, a few truckers did come forward. Elsewhere a trucker came forward and was fired as a result of disclosing the problem. But he said, "It's off my conscience now." Well, it is on ours now. It is up to us.

But that was a reference to Tennessee problems.

Senator EXON. I appreciate that.

But again, for the record, are you telling us today, Mr. Commissioner, that, while you have strong suspicions and believe that there are some serious problems in this area, there has been no single incident that you could point to in Tennessee, to your knowledge?

Mr. BISSELL. Let me stress again, Senator, that it is not within the scope, sir, of our charge or our authority to make any investigation of this particular practice. So there is no way that we would have had information to that effect in the course of our current activity as regulators of safety.

No, we have not made that investigation because we had no responsibility or authority to do that, that I am aware of.

Senator EXON. Thank you very much, Mr. Commissioner. We appreciate your being here.

You are excused.

Mr. BISSELL. Thank you, sir.

Senator EXON. I call our third panel, now. The third panel is made up of Mr. Robert E. Farris, vice president—Policy, American Trucking Associations; Mr. Clifford Harvison, president of the National Tank Truck Carriers, Inc.; Mr. J. Terry Turner, executive director of the Interstate Truckload Carriers Conference; and Mr. William Dempsey, president, Association of American Railroads.

Welcome, gentlemen. Welcome back to most or all of you. We are always delighted that you experts in the transportation industry take time to come over and help us out on these matters.

We will proceed immediately with your statements. If you have written statements, they are accepted, without objection, at this time for the record.

I would like to ask that you each summarize at this time. Then there will be some questions.

Mr. Turner, we will begin with you.

STATEMENT OF J. TERRY TURNER, EXECUTIVE DIRECTOR, INTERSTATE TRUCKLOAD CARRIERS CONFERENCE

Mr. TURNER. Thank you, Mr. Chairman, and good morning. My name is J. Terry Turner, and I am executive director of the Interstate Truckload Carriers Conference, the national association representing the irregular route common and contract truckload motor carrier industry nationwide, carriers that are domiciled in every state except for Alaska and Hawaii. Our members transport just about any freight you can fit into a dry-van trailer or on a flatbed trailer. Additionally, we represent more than 100 refrigerated motor carriers. Our members transport freight throughout the 48 contiguous states, Alaska and all Canadian provinces.

The conference is affiliated with the American Trucking Association.

We thank you, Mr. Chairman, for the opportunity to discuss the issue of truck transportation of food and food-related products in refrigerated trailers that have also been used to transport municipal solid waste. My association does not condone, support or encourage carriers to participate in this unsanitary practice. The conference's refrigerated division passed a resolution condemning this practice at its annual meeting in July of 1989. A copy of the resolution is attached to my testimony.

Since last July, the problem of transporting solid waste by truck has been addressed by the marketplace. Most, if not all, of my refrigerated carriers have been required by their customers to certify that they do not transport solid waste in their refrigerated trucks. In many cases, such language is now part of the transportation contract. I would also add, Mr. Chairman, that my refrigerated carrier members have all indicated that they did not haul solid waste.

We believe that any legislation that attempts to deal with the disposal of municipal solid waste must be carefully and thoroughly thought out and the total magnitude of the subject appreciated.

Mr. Chairman, this is not a transportation issue. This is a social issue of how we as a nation cope with the disposal of not only municipal solid waste, but hazardous materials. Newsweek magazine devoted its November 27, 1989 cover story to the issue of being

buried alive under a mountain of trash. According to this article, Americans toss out 160 million tons of waste each year, enough to fill a bumper-to-bumper convoy of garbage trucks halfway to the moon. More than two-thirds of the Nation's landfills have closed since the late 1970s, and one-third of those remaining open will be closed in the next five years. Newsweek reports that some 28,000 tons of garbage travel the Nation's highway each day with New York, Pennsylvania and New Jersey exporting some 8 million tons across state lines a year.

The trucking industry did not create this problem, and we should not be viewed as the total villains. We are a part of the disposal solution, and any legislation aimed at correcting certain unsafe practices should not be so overly broad that local communities will literally be buried alive under their own trash because it cannot be transported. Corrective legislation should ensure that food products are safely transported while simultaneously permitting carriers, most of whom are small businessmen, the maximum flexibility to utilize the equipment that represents their livelihood.

This association has worked closely with the House of Representatives' Subcommittee on Surface Transportation of the Public Works and Transportation Committee on its bill, H.R. 3386, the Safe Transportation of Food Act of 1989. We support H.R. 3386 because it corrects a specific and identifiable problem, that of the transportation of solid waste in refrigerated motor vehicles. Senator Gore has introduced S. 1904, the Clean Food Transportation Act, that in most respects closely parallels H.R. 3386, and for the most part, we also support this legislation.

The House of Representatives found that the movement of solid waste in a refrigerated trailer that may later move food is a particularly dangerous practice because food products commonly moved in a refrigerated van, such as produce, may not be protectively packaged. However, even H.R. 3386 does not completely ban this practice since the bill would require that a list of acceptable solid wastes that can be moved in the same trailer as food products be published, and that this list must at a minimum include cardboard and food packaging. This exception is in full recognition that grocery store chains will transport food in vehicles to local stores and from these local stores transport crushed cardboard boxes back to a central terminal. Obviously the same trailer can move food and solid waste without endangering the public health.

Mr. Chairman, the carrier members of my association readily accept their responsibility to transport and deliver food products in a safe and healthful manner. At the same time, the generators of solid waste must accept their responsibility to dispose of their own solid waste within their states. If they cannot dispose of their solid waste in their own states for whatever reason, then they must ensure that it is transported in such a way that it will not cross-contaminate other consumer products.

The answer is packaging. If we can package hazardous materials such as explosives, as common as lighter fluid, and corrosives, such as chlorine bleach, and move these hazardous materials in the same trailer as food, then certainly we can establish packaging standards and procedures that would ensure that solid waste does not contaminate a trailer.

Such a packaging requirement should be placed squarely on the person who generates the solid waste. This would ensure that the proper packaging is used and compliance with these standards could easily be monitored. This packaging requirement would provide complete protection from any solid waste contamination and minimize taxpayer expense to ensure compliance through an even larger and more costly bureaucratic system. It should not be the responsibility of a truck driver to determine what defines solid waste and what may or may not be transported in his trailer. If such waste was properly packaged, there would be no conflicts. The generator of that waste must be held responsible for the packaging.

Senator Gore's bill and H.R. 3386 are good first steps. However, they do not go far enough to insure that safe transportation practices are the legal responsibility of all modes. Therefore, we suggest that the law must include the railroads. The railroads are transporting solid waste in boxcars, trailers on flat cars and containers on flat cars. All modes of transportation must equally bear the responsibility of safely transporting the Nation's food supply.

Mr. Chairman, as our conference name suggests, my members operate in interstate commerce. They are forced to deal with numerous state laws that many times can be conflicting. If this legislation is to pass, and we support it, we must have explicit Federal preemption that will prevent a state from opposing a law that is greater than the Federal law. Several states, most notably Pennsylvania and Ohio, and after a phone call last night, the State of New York, are considering legislation that would restrict the transportation of municipal solid waste into or through their states. We cannot operate with varying and conflicting states laws when this is a national problem. We must have a cohesive and comprehensive national policy on dealing with this problem.

Mr. Chairman, as I said before, this is a complex social issue that requires an integrated waste management strategy. As you consider this legislation, please view the transportation industry as part of the solution, not the real problem, and give us the flexibility to safely, economically and practically transport municipal solid waste. Packaging accomplishes this goal. Packaging gives the transportation industry the ability to meet the flexible needs of municipal solid waste disposal while insuring the integrity of the food chain.

We pledge to work with you, the committee and your staff to craft a bill that addresses all the concerns without causing new problems.

Thank you, and I will be glad to try to answer any of your questions.

Senator EXON. Thank you very much, Mr. Turner, for a good statement.

I could not help but note in your statement that you specifically mentioned New Jersey and New York. Both of those states are looking with covetous eyes I understand on the great space to the west in the United States.

Have they ever considered packaging up with waste and shipping it to Japan, or are Japan's doors closed to that also? It seems to me like with the amount of waste that we are generating, we could straighten our imbalance of trade out pretty quickly if we could get

the Japanese to open their doors to our waste. I suspect that that will not come to pass.

Mr. TURNER. No, sir, but I support you in that effort.

Senator EXON. Mr. Dempsey, the railroads could not haul that kind of operation, but please continue our discussion and give us your thoughts and suggestions on what we should and should not be doing in this area.

STATEMENT OF WILLIAM DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. Thank you very much, Mr. Chairman. I am glad to be here to represent the railroads on this important subject and certainly commend the committee for taking it up. I can put our position to you pretty swiftly I think.

The public, of course, as you have said, has an absolute right to demand that food be transported in a way that does not run the risk of contamination. We think we have a good set of practices in the rail industry, but at the same time, if the committee thinks that it would be desirable in order to reassure the public that legislation embrace the railroads, you will have our support in that effort.

Now, as to what we do and what has happened in the rail industry, I note at the outset, as I am sure you are aware, that the 1987 EPA study found only a half a dozen or so documented cases of contamination in the United States in the past 30 years. And of those, so far as I can tell—it is not entirely clear from the report—only one involved rail transportation, and that was back in 1968.

There is a good reason. This does not touch any of the evidence, of course, that you have been talking about this morning, but at the same time, none of that, so far as I know, relates to rail transportation.

What we do is this. As to solid wastes, we transport solid wastes only in dedicated cars so that those cars cannot be used for the movement of any other commodity. So far as the kinds of equipment that are used to transport a variety of products——

Senator EXON. Excuse me, Mr. Dempsey.

Mr. DEMPSEY. Yes.

Senator EXON. Does that mean then that solid waste that is handled on trains means a car dead-heading back from wherever it goes?

Mr. DEMPSEY. Yes.

Senator EXON. In other words, it is a one-way proposition.

Mr. DEMPSEY. Yes.

Senator EXON. That is expensive, isn't it?

Mr. DEMPSEY. Yes, it is, but we feel that is the only way to operate this kind of a service.

Senator EXON. It is a good point. I just wanted to clear it up.

Mr. DEMPSEY. We do that also, I may add, with other kinds of commodities, some tank cars. We dead-head them back if we cannot get the same kind of load coming back.

As to boxcars and refrigerated rail cars which are used to transport a variety of different commodities, what we do is we have had, since 1980 or so, a national car grading system under which we

assign grades from A, B, C, K and W. A is the top grade, and food can be transported only in grade A cars. K is the whole range of contaminants. And if a K kind of commodity is transported in a car, you cannot move an A commodity, that is, food or related products, in it until you have had it upgraded. Now, that is an expensive business, generally. It involves replacing the linings, for example, and that sort of thing. So, it is not done except perhaps, by accident occasionally. When it is done, then the car must be upgraded and must be inspected before it can regain the A classification.

The cars are registered in our registry at the AAR, and the grades are registered there. The registry is updated through our computer network every hour so that these grades on these cars are available to all shippers and all railroads.

Now, I have to say that this system covers, we think, over 90 percent of the car fleet, but we do not have every car of every short line railroad and every regional railroad in that registry.

Then there are all kinds of—I say all kinds. There are a number of Federal regulations that bear upon the transportation by rail of hazardous materials. We have to have placards if we have residues of hazardous materials in tank cars. We cannot transport poisons in anything except dedicated cars unless we then thoroughly clean them and so on. And those regulations are detailed in my statement.

I would end then, and be available for questions, only by saying that if railroads are included in legislation, then I would hope that the legislation would incorporate a preemption provision as I understand is in the two bills that you have before you, and that the Secretary of Transportation would be given adequate discretion to identify the commodities in question and to prescribe the practices with respect to, for example, the kind of cleaning that could be associated with the transportation of certain kinds of commodities.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY

PRESIDENT OF THE ASSOCIATION OF AMERICAN RAILROADS

Mr. Chairman, on behalf of the members of the Association of American Railroads (AAR), I would like to express my appreciation for the opportunity to testify here today. The AAR is a non-profit trade association representing most of the major railroads operating in North America. The AAR's members welcome the opportunity to discuss the issue of backhauling and railroad industry practices which ensure that food and related products are transported safely.

It goes without saying that the public demands that food products be produced and distributed safely. Insofar as transportation is concerned, the public health ramifications of handling shipments of food and related products demand that transportation companies treat such products as very special categories and handle them accordingly. In particular, transporters must ensure that food and related products remain free from contamination.

In 1987 EPA submitted a report to Congress entitled, "Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials."[1] The study is noteworthy, as it is the only one we are aware of that relates to the backhauling issue. Despite the title of the report, the study examined all contaminants, not just hazardous materials.[2] Significantly, EPA found only eighteen documented cases of transportation-related contamination and five additional undocumented cases, despite

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[1]United States Environmental Protection Agency, Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials: A Report to Congress, EPA/540/01-87/001 (April 1987).

[2]EPA Study at 1-2, 1-3.

searching records going back thirty years. Less than half the cases of contamination occurred in the U.S. It is no wonder that EPA concluded that "[t]he small number of incidents identified in this study suggest that joint-use contamination is not a significant problem."[3]

Certainly, there is no record of contamination of food or related items from rail transportation in recent history. That is due in large part to existing industry practices and government regulations that help ensure that instances of contamination will not occur.

With the recent publicity concerning the issue of transporting municipal waste, I would note that railroads only transport municipal waste in dedicated equipment. That is, rail cars used to transport municipal waste are not used to transport other commodities. There is no opportunity for contamination of food or related items from the transportation of municipal waste by rail.

To guard against contamination of various sorts, in 1982 the railroad industry established the National Car Grade System. This system "grades" box and refrigerator rail cars, the rail cars usually used in general commodity service to transport a variety of commodities (most other rail cars are used in assigned commodity or shipper service, so that a grading system for such equipment would not be useful). Every commodity that can be shipped in a box or refrigerator car has been assigned an

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[3]EPA Study at 5-1.

appropriate car grade--either A, B, C, K, or W. When one of those commodities is loaded in a rail car, the car is assigned that grade on the premise that an appropriate car for that commodity has been used. Box and refrigerator cars are also given grades when inspected at repair and cleaning facilities. Grade A is the highest grade, grade B a notch lower, grade C signifies a car not suitable for high grade commodities, and grade U signifies that a car is unfit for loading. Grade K signifies that a rail car has been used for K grade commodities, potential contaminants, and grade W means that a rail car is utilized to transport bulk municipal waste.

Food products are transported only in A grade cars, that is, cars of the highest quality. On the other hand, railroads are restricted from using A grade cars for K grade commodities, potential contaminants. Potential contaminants include a wide variety of chemicals, petroleum and coal products, metal products, wastes and scrap materials, hazardous materials, certain bulk commodities such as asbestos and crushed glass, and various meat, poultry, and agricultural products (e.g., hides and sugar cane). If an A grade car is loaded with a K grade commodity, the railroad involved must pay to upgrade the car to A grade condition following the movement. Usually that would involve the replacement of a liner, side doors, or some other significant expense. For that reason, A grade cars are not utilized for K grade commodities. Also note that a K grade car

cannot have the grade changed until the car is physically inspected and approved by a railroad car inspector.

In response to the concern over the shipment of bulk municipal waste, last year the AAR established the "W" grade for box or refrigerator cars used to haul municipal waste. As I noted, rail cars hauling municipal waste are dedicated to that service so the risk of contamination is virtually non-existent.[4]

The grade of a car is reported to the AAR's computer data base on rail cars, the "Tele-Rail Automated Information Network," or "TRAIN II." Car grade information is transmitted to the TRAIN II system on an hourly basis. The car grade information is available to shippers and carriers.

There are numerous federal regulations that also protect against contamination of food and related items.[5] For example, DOT regulations require that tank cars containing residues of hazardous materials be placarded with "RESIDUE" placards until the tank car has been reloaded or "is sufficiently cleaned of residue and purged of vapor to remove any hazard."[6] The regulations specifically provide that rail cars transporting poisons must be thoroughly cleaned after unloading unless the

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[4]See EPA Study at 4-10, 11, for a discussion of the National Car Grade System. EPA stated: "The Car Grade System helps to ensure that nonhazardous materials are shipped in appropriate rail cars."

[5]For a more detailed discussion of applicable federal regulations, see EPA Study, chapter 3.

[6]49 C.F.R. §172.510(b).

cars are used exclusively to transport poisons.[7] Poisons may not be transported in the same rail car as foodstuffs.[8] DOT regulations also require that all hazardous material which has leaked from a package must be removed.[9] Food and Drug Administration regulations require that the transporting of food be conducted in accordance with "adequate sanitation principles," that "[c]ontainers and carriers of raw [food] materials...be inspected on receipt to ensure that their condition has not contributed to the contamination...of food," and that "transportation of finished food...be under conditions that will protect food against...contamination."[10]

Several bills have been introduced in both Houses that address the transportation of food and related items in rail cars that are also used to transport waste or hazardous materials. On the basis of the industry's record, and the industry and federal regulatory programs that ensure contamination will not occur, the AAR does not believe it is necessary to enact legislation to protect against food contamination from railroad transportation. Nevertheless, the railroad industry recognizes the heightened concern of the public and Congress regarding potential contamination of food during transportation and would not object if the Committee decides legislation is necessary. If

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[7] 49 C.F.R. §174.615.

[8] 49 C.F.R. §§174.280, 380, 480, 680.

[9] 49 C.F.R. §174.57.

[10] 21 C.F.R. §§110.80, 93.

legislation is deemed necessary, it should be drafted in a manner that will permit the Secretary of Transportation to develop regulations that take account of existing safe and appropriate rail industry practices designed to protect food from contamination by non-food products and that will accord the Secretary flexibility in defining those non-food products.

Mr. Chairman, the railroad industry is dedicated to ensuring that food and related products are transported properly. The record indicates that the railroads have achieved that objective. I would be happy to answer any questions you or other Committee members might have on railroad practices in this area.

Senator EXON. Thank you.

Mr. Farris, we are glad to have you here this morning, and please proceed with your testimony.

Mr. FARRIS. Thank you, Mr. Chairman.

Senator GORE. Mr. Chairman, if I could interject before Mr. Farris begins, I would like to introduce him to the committee because he is a Tennessean and our former secretary of transportation, and he is a personal friend. And I really appreciate the chance to hear from you.

We may not agree on every aspect of this, but I want to say for the record that the American Trucking Associations has been very cooperative with my staff as we have worked on this problem and drafted the legislation. And I really appreciate the spirit of cooperation that has characterized our discussions.

I will make comments on yours later, Mr. Dempsey. I really liked that statement.

Thank you, Mr. Farris.

Senator EXON. Thank you, Senator Gore.

STATEMENT OF ROBERT E. FARRIS, VICE PRESIDENT, POLICY, AMERICAN TRUCKING ASSOCIATIONS

Mr. FARRIS. Senator Exon and Senator Gore, and Al, it is always good to see you again, and it is nice to have somebody here who talks the same way I do.

First let me say that that kind of cooperation will continue. ATA is appalled at the practice of utilizing units that are used to carry unprocessed foods on their front hauls and then transport waste without proper precautions on their backhauls. That is a dumb idea. It should not be done. And we do not condone that, and I do not see how anyone could in their right mind.

However, there are some things that we need to be concerned about as we try to get a hold of that. Is this truly a transportation problem? Are we looking at adulterated food? Or is it something that we want to do away with because it appears on the surface to be a real problem for us?

Just recently I was flying one of our major airlines, and they served me a meal. And I use that term loosely.

But they gave me a meal, and then they came back with the same cart and picked up my tray and put it back in the same cart. So, they did a backhaul right there on board that aircraft by delivering me some food and then putting my waste material right back into the same container. So, that is probably a practice that is going on throughout the entire food chain.

What is happening to kiwis that come from New Zealand or artichokes that come out of Spain and Italy? The whole food supply stream is one that we generally ought to be concerned about, and is the food that is appearing on our tables and being consumed by the American public adulterated or not? And I think we all share that genuine concern.

So, if we look at it in that problem, then I will present to you, Mr. Chairman and Senator Gore, that the lead agency ought to be those who have that authority to assure that the American public has a pure food supply.

Having worn the hat of the Federal Highway Administrator, I can tell you that it would be difficult for us to take the lead in assuring that.

Senator Gore, I know that you have asked for the MCSAP program to be a part of that, and I think it probably should. I think the key question here is who is the lead agency. Who takes the principal lead in identifying the products that can be safely transported? Who takes the lead in establishing the kind of packaging that can be prescribed?

And to ignore the fact—and I think you, Senator Gore actually brought it out—that it is a solid waste problem and we are generating huge amounts of waste in this country. And I am concerned that there is no one that generates waste that was invited to be a part of your panel. We should have some of the city mayors, like my good friend, Bill Boner, who is struggling in Nashville, Tennessee, trying to find new landfill sites. And that problem is not going to go away. If we overreact here in a manner that constrains a way to handle what is going on at the moment, we could seriously begin to impact a lot of communities and mayors and county commissioners who are trying in their own right to deal with their waste problems within their jurisdiction. So, just a word of caution.

We are part of the solution I hope rather than being part of the problem. And we ought to be looked at in that light, taking our statement at face value that we do not support hauling a food product in contaminated trailers or units and that such trailers and units ought to be adequately cleaned and processed before they do haul food. The question is how do you do that, and who certifies it that it is done properly, and who identifies the products that can be adequately carried because solid wastes are all not the same. They are all different. There are liquids, and there are hazardous materials, and there are medical and there are non-hazardous waste, such as shredded paper much of which can be effectively bundled and hauled, as Mr. Turner properly pointed out that in many areas, is being currently done. We ought to be very careful that we do not overreact, but a act properly.

It appears as we look at this that the real culprit in this process is some chemicals that are being hauled and loose garbage. And if we can focus on those things, maybe we can begin to get a handle, in a more serious manner, on how to deal with this problem that is of a concern to all of us.

ATA shares that this is in part a packaging problem. It is not necessarily a safety issue, and I do not think it is basically a transportation issue. It is how is the material prepared that we pick up. If we properly package that material, as we now do hazardous waste, can it not in fact be transported safely and contamination risk eliminated.

We have a concern that if we are forced into dedicated fleets, that what we have done is increase the cost immeasurably in dealing with a very serious solid waste problem. So, we need to be very cautious on that. We do not want to put any more trucks—and I think Mr. Dempsey would share that with us—on the highways, and if we have to have dedicated dead-haul vehicles coming back and forth trying to deal with the municipal waste, what we have done in effect is added more vehicles on the road.

There ought to be a sensible way that we can ascertain that such vehicles are adequately cleaned and that the material that is being introduced in those vehicles is adequately packaged and handled properly. That is a responsibility that ought to be placed upon the generator, and that is why you ought to at some point during your deliberation listen to those who are generating this kind of waste and the problems they face in trying to dispose of it.

That, in essence, covers our statement, Mr. Chairman. I want to reiterate that we are in a position of wanting to cooperate and work with this committee. We are in support of what you are trying to do. You will find us to be a very cooperative agency. We will try to give you any information we can. We want to make sure that we are speaking out for the transportation portion that we can continue to provide safe economic and sanitary transportation to our food industries throughout the United States.

Thank you.

[The statement follows:]

STATEMENT OF ROBERT FARRIS, VICE PRESIDENT, POLICY, AMERICAN TRUCKING ASSOCIATIONS

Good Morning, Mr. Chairman. I am Robert Farris, Vice President for Policy at the American Trucking Associations.

ATA is the national trade association of the trucking industry. Through its 51 affiliated trucking associations in every state and the District of Columbia, 10 affiliated conferences and several thousand individual motor carrier members, ATA represents every type and class of motor carrier in the country; for-hire and private; regulated and exempt.

The trucking industry is composed of more than 260,000 American firms, and accounts for 77 percent of all freight transportation revenues in this country. The industry employs 7.4 million Americans and generates annual revenue in excess of 225 billion dollars.

I am here to discuss the issues of utilizing vehicles which haul food products to transport solid wastes and hazardous materials and the practice of commingling food products with hazardous materials. ATA views these as two separate concerns and will address them one at a time.

I want to state at the outset, Mr. Chairman, that the transportation of trash on a trucking backhaul does not appear to violate any Federal law or regulation. It does appear, though, that some of this activity runs contrary to good common sense.

We are appalled over the practice using refrigerated trailers because these units, on their front hauls, customarily carry unprocessed food products. In no way do we condone the use of such vehicles for an unsanitary shipment of freight on their backhauls.

During the last few months, ATA has become intimately familiar with the practice of transporting trash in vehicles also used to haul food products and the driving force behind it-economics. The problem arises after the trucker reaches his destination and he seeks to secure a load of freight so he does not have to bear the costly burden of an empty backhaul. We are aware, now, that it is a problem that is national in scope, with the majority of activity taking place on backhauls from the waste-laden East Coast cities to the Midwest.

However, Mr. Chairman, I submit that this practice is only a small portion of the entire waste transportation picture. To merely look at it from the perspective that all wastes are the same does not give you the proper picture. There are many types of wastes -- solid and liquid; non-hazardous, hazardous, and medical; toxic and non-toxic.

Much of the solid waste in this country is in the form of paper waste generated from computer paper, cardboard boxes, and

consumer product packaging. These specific types of waste, when baled, are easily transported and present little or no danger of contaminating the transport vehicle.- Hazardous, toxic, and medical wastes are already heavily regulated and must be transported properly packaged in order to ensure product retention and a sanitary environment. What is left is the garbage which causes the problems. This is the material that needs to be addressed.

Loose, decomposing wastes do pose a significant contamination risk. The danger of contaminating a transport vehicle is minimal when waste materials are properly packaged. Baled paper and cardboard do not pose contamination threats. Whether shipped in refrigerated or standard box trailers without refrigeration, this type of waste, when not properly packaged and contained, will present problems.

It is for this reason ATA contends that this is, first and foremost, a packaging problem- not a transportation problem that warrants the use of dedicated vehicles. In the majority of cases, once a material is packaged properly for shipment, the threat of contamination is eliminated.

Hazardous materials is a good example of product packaging and integrity. Regulations governing the shipment of a hazardous

material revolve around very specific packaging standards designed to keep the product in its package and away from the environment. These regulations already address the need to segregate certain products from food and other types of hazardous materials through use of a separation and segregation chart.

Mr. Chairman, there are literally thousands of hazardous materials, and many of them are common products used in every household in the country. Some paints, for example, are classified as hazardous. Many household cleaning aids, and yard and garden products available at grocery and hardware stores throughout the country, also are hazardous materials.

If we were required to maintain and operate dedicated trucks for a myriad of different products, the country's transportation costs would significantly increase to levels that will be totally unacceptable to consumers. The number of trucks will increase to a level unsatisfactory to other highway users.

ATA agrees that there are instances when a particular vehicle should not be utilized to haul food products after hauling certain wastes or hazardous materials; but, prohibiting the safe and sanitary transportation of processed food and food products with hazardous materials ignores the fact that these commodities are stored together, stocked together, bagged together, and

transported home together. Again, it comes down to the way a product is packaged for shipment.

On the issue of vehicle decontamination, ATA believes that trailers- whether they be refrigerated, box, or tank trailers, should be properly cleaned by steam or some other effective process prior to leaving the landfill site. This would solve two problems; first, it would ensure the trucks are in a sanitary condition before leaving the landfill, and second, it would ensure proper disposal of the waste waters or chemicals used to sanitize the vehicles.

Legislation has been introduced by two different Senators and several Congressmen in the House of Representatives which address the problem being discussed here today. These Bills would require the Secretary of Transportation to promulgate regulations regarding the use of tank vehicles and refrigerated trailers for the purpose of transporting food and chemicals, and the general commingling of food products and hazardous materials in the same transport vehicle.

ATA must question the validity of assigning this task to the Department of Transportation (DOT). As DOT is responsible for vehicle safety, weight, and size; it would seem more appropriate to place this task with the Food and Drug Administration. After

all, this is a food adulteration problem, not one of vehicle safety.

Mr. Chairman, ATA has worked closely with the staff of Senators Gore and Gorton in attempts to formulate legislation which would provide for safe and sanitary transportation of food and food products; while at the same time allowing the trucking industry to remain a viable transportation option. The same is true for the staffs of both House committees addressing this problem.

Any legislation introduced should include the different modes of transportation. H.R. 3520, the Bill introduced by Congressman Luken of Ohio is a step in the right direction in that it does not limit the scope of the legislation to motor carriers. H.R. 3520 recognizes the fact that railroads transport the same types of materials as do trucks.

Any legislation introduced should contain preemptive language to safeguard against a proliferation of conflicting and burdensome state laws. Congressman Luken's Bill achieves this by making the Food/Garbage issue an amendment to the Hazardous Materials Transportation Act (HMTA). Also, Senate Bill S1904, introduced by Senator Gore and referred to the Committee on Commerce, Science, and Transportation also has provisions for preemption of state laws.

There is currently a trend taking place where states are adopting legislation on their own to address this issue. The most startling of the legislation introduced has been done so in the State of Pennsylvania. Pennsylvania's House Bill 331 contains language which prohibits the use of a vehicle from hauling food or food products if that vehicle had EVER previously hauled wastes or hazardous materials. Any vehicle used in commission of an offense shall be deemed contraband and forfeited to the State.

Mr. Chairman, legislation such as proposed in Pennsylvania mandates dedicated fleets for the carriage of hazardous materials and solid wastes. If all states decide to pass similar legislation, the trucking industry as we know it will be severely disrupted at an inestimable cost to the nation.

The current legislative proposals in both the Senate and House are steps in the right direction. ATA pledges its total cooperation and support in efforts to develop a solution to the problem addressed here, today.

This completes my statement, Mr. Chairman. I will be glad to respond to your questions.

Senator EXON. Thank you, Mr. Farris. I listened with great interest to your excellent testimony and, indeed, you do sound like Senator Gore. You said you sound alike. I was only able to understand all that you had to say because I have gone to school under the tutelage of Senator Gore on the English language as spoken in Tennessee.

And so, it was very easy for me to understand you. Thank you very much.

Senator GORE. Repeat after me. Single warhead ICBM.

Senator EXON. Mr. Harvison, we welcome you and please continue now with your testimony.

STATEMENT OF CLIFFORD HARVISON, PRESIDENT, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. HARVISON. Thank you, Mr. Chairman and members of the committee, and thank you for receiving the testimony of National Tank Truck Carriers, a trade association representing over 200 tank truck carriers, many of which have extensive involvement in the bulk transportation of food grade products.

My name is Cliff Harvison. I have been president of the association since 1972.

For the past several months, media reports have focused on the practices of some tank truck carriers and food shippers involved in such transportation. During that period, our association's members and staff have been working with shipper groups and Federal regulatory agencies and your staffs, Mr. Chairman, in anticipation of congressional action.

These joint efforts have two fundamental objectives: number one, to survey our respective memberships for the best operating practices and quality control programs; and two, to organize that material into five working papers which could be submitted to an appropriate Federal agency as draft regulations.

Therefore, suffice it to say, NTTC strongly supports legislation which would mandate Federal rules in the following five areas: number one, design standards for cargo tanks handling food and related products; number two, a uniform method of identifying trailers in such service; number three, quality control standards for the interior cleaning of these cargo tanks; number four, a system of documentation that ties in the propriety of the vehicle, the cleaning method and its overall acceptability for the transportation of food products; and fifth, lists of acceptable non-food products which can be transported in cargo tanks without risk of subsequent contamination.

Mr. Chairman, I am pleased to report that virtually all of this work has been completed.

While we reaffirm our support of Federal legislation, as introduced, we also respectfully call for some substantive amendments which we feel would strengthen both marketplace safety and regulatory compliance.

For instance, we believe that shippers should be compelled by statute to inform common carriers that a particular load offered for transportation is food grade. For the tank truck carrier, such notification will trigger dispatch, equipment and documentation re-

quirements. One must remember that many products commonly hauled in tank trucks may also be used in both food processing and in non-food applications.

Mr. Chairman, if I can digress just momentarily. We have got to have that. Again, there are many products that we haul as tank truck carriers that can be used in food processing and food preparation and that same product can go into, let's say, the manufacture of shoes. We have to know ahead of time that a given load is meant for introduction into the food chain.

Next, we ask that mandatory insurance requirements, currently codified at section 30 of the Motor Carrier Act for carriers of hazardous materials and hazardous substances, be extended to bulk carriers of food grade products. Simply stated, the section 30 requirement is a proven method of keeping the unscrupulous operator out of a very risk-sensitive business. It is a regulatory requirement which can be enforced by the shipper and insurance is available to trucking companies with good safety records.

And again, Mr. Chairman, to digress, however, momentarily on some comments made this morning. We have no confidence that with respect to tank truck transportation that the application of a MCSAP-based enforcement program will even begin to eliminate those abusive practices that are out there.

Third, and while I tremble at mentioning the phrase "Federal preemption", we believe it must be codified in this legislation. In terms of tank truck applicability, final Federal regulations will be rather technical, and state-by-state deviations from these standards can only create inefficiencies and obstacles to compliance.

Lastly, Mr. Chairman, we believe that all persons who hold themselves out to clean food grade trailers should have their facilities checked and certified by independent third parties, such as state or Federal agencies, or their contractors.

This practice is commonplace in the dairy industry today, and there are less than 100 facilities in the United States today cleaning food grade tank trailers. Thus, a certification procedure and bonding requirements for cleaning facility operators, similar to that found to be applicable to trucking companies, would further build public safety and confidence.

Thank you again, Mr. Chairman, for allowing us to testify. Hopefully we have demonstrated a positive and aggressive response in supporting legislation and regulatory controls which will enhance both the food products industry and alleviate justifiable public concerns about practices in food grade and tank truck industries.

Senator EXON. Mr. Harvison, thank you very much. And I wish to thank all members of the panel for the excellent, positive statements that you have made. And we want your suggestions and concerns as to what we should do in fashioning this legislation.

Because of his schedule, I am now pleased to recognized Senator Gore.

Senator GORE. Thank you, Mr. Chairman. I want to thank Senator Gorton also for the courtesy both of you are showing me. I am going to be necessarily absent for about 15 minutes after my round of questioning, and then I will return for the final panel.

I think this has been an unusually helpful panel, Mr. Chairman, and I want to join you in commending the witnesses here for ac-

knowledging their disagreements with some of what we are trying to do, but responding in a constructive way to try to help us solve this problem.

Mr. Harvison, you went last. Let me start with you.

You have expressed support for increasing insurance requirements to $5 million. Do you think this would be a barrier to entry for small carriers, or do you think it will serve the purpose of weeding out bad carriers, or both? I tend to like the idea, but what about the concern some may express on the barrier to entry question?

Mr. HARVISON. Senator Gore, it is certainly a valid question. It has been my experience in the past decade, since the mandatory insurance requirements were first introduced, particularly for tank truck carriers, via the Motor Carrier Act of 1980, that it has been a very, very positive element. It tends to weed out the worst type of operator, and it is quite apparent, very frankly, from the Seattle newspaper articles that—as reluctant as I am to admit it—there are certain unscrupulous operators in the tank truck sector. It does tend to weed them out.

It is not a barrier to entry. Of my 200 bulk carriers, of which 160 are domiciled in the United States, we have some truckers who operate three and four tank trucks. All they haul is gasoline or fuel oil as an example. They have the insurance. They are small carriers. They are family owned proprietorships. The insurance is available.

And I think the best benefit of it really is kind of analogous to the old story that, if you go to the bank and you borrow $10,000, you've got a problem. But if you go to the bank and you borrow $100,000, the bank has got a problem. At $5 million, the insurance company comes in and tends to look at the carrier. The insurer inspects his equipment. He inspects the carrier's quality control programs, his record keeping and his overall compliance record. And that is before the insurance is granted. This has proven most beneficial in our industry, particularly in the area of those carriers that transport hazardous substances. It is done at no cost to the Federal Government.

Senator GORE. That old saying ought to be amended. If you borrow $1,000, you've got a problem. If you borrow $1 million, the bank has a problem. If you borrow $1 billion, the taxpayers have got a problem.

Unfortunately, we have seen that.

Let me get clear on this point. Mr. Farris, you jump in on this also.

You talked about adequately cleaning trucks. Are there any circumstances, Mr. Harvison, where you could envision a truck carrying some chemical solvent in one direction and then carrying orange juice in the other direction, provided only that it was cleaned in between those two legs of the trip?

Mr. HARVISON. Oh; most assuredly, yes. Again, it depends on what you call a solvent. All right? We haul, for instance, an awful lot of what are called water white solvents. They are superb cleaners in and of themselves. Now, they have to be cleaned——

Senator GORE. What about a chemical that is harmful to health? Can you imagine it being in a tank truck and then one of your

companies cleaning out the tank and then putting orange juice in the same tank?

Mr. HARVISON. Harmful to health in certain concentrations. The context of your question—Mr. Gore, and I am going to accept it at face value if you will accept my premise that there are certain technical exceptions to every rule—is, no, I cannot perceive that.

One of the things, very frankly, about some of the legislation that has been floating around is that some of the legislation I think properly motivated contains an outright prohibition of any prior transportation of any hazardous material. Well, that type of legislation fails to recognize that because of congressional action, particularly in the Super Fund area, there are many food grade products that during bulk transportation are hazardous materials. For instance, if we spill certain amounts of acetic acid in what is called a reportable quantity, we have to call EPA. Acetic acid is vinegar.

Again, there are all kinds of permutations, and I am scared to give you a blanket answer. I am trying to answer your question in context, and the answer to your question in context is, no.

Senator GORE. Okay, that is good and that is helpful.

S. 1904 and the House bill—I do not want to speak for Senator Gorton's bill. It may have a similar provision. But we spell out a list of exceptions that can be carefully constructed where there is absolutely no hazard to health. But where there is a hazard to health, you cannot mix them.

All right, now let me move on very quickly.

Mr. Dempsey, I said briefly I really liked your statement. I want you to know that every time from now on that you come up here and testify before this committee, I am going to listen even more carefully because I really think you have been extremely responsible in your approach to this. You are saying, in essence, what Mr. Turner says. Trucks and railroads compete, and you are saying if we want to include railroads, it's okay with you. You don't think there is a problem there. You have spelled out a very responsible set of industry practices designed to prevent the problem which includes expensive dead-heading, but you say if we want to include you, that's fine.

I turned to the Chairman and I said, boy, I tell you, we sit here so many times in these hearings, and when somebody comes up and just has candor and common sense, it is real refreshing. I really appreciate that statement.

Mr. DEMPSEY. Thank you, Senator.

Senator GORE. For the record, I wish that you would elaborate on the procedures used to clean various cars when they are not used for dead-heading.

Mr. DEMPSEY. Yes.

Senator GORE. I will not ask you to go through that technical detail on the record.

Now, to what extent do you all perceive or blame the competitive pressures associated with deregulation for creating this problem? Brief answers, if you could. My time has run out.

Mr. FARRIS. Well, I'll respond quickly. Obviously, deregulation makes everyone look for full utilization of their equipment. So, they are looking for backhauls. You know, Coors Beer travels in refrigerated units, and they will back haul door frames so they do

not have to go all the way back to Golden, Colorado empty. I do not think there is anything wrong with that. That is a resource that we ought not to ignore in this country.

I think the issue here is are we doing it properly. Are there certain elements that are being pushed by economics? I think as we focus on the generators of the waste, they are being pushed by economics to try and find the cheapest way they can to get rid of their communities waste. One of the best ways to do it is ship it out of town. If we've learned one thing about waste, Senator Gore is, you cannot throw it away! It is going to be there. You can move it around, but you cannot throw it away.

And so, economics obviously plays a role in this whole question. We are just simply taking the position that when you try to do that in units that are carrying unprocessed food, it is a dumb idea and it ought not to be done.

Senator GORE. Mr. Chairman, I will ask the other witnesses to respond to that for the record.

Maybe I will be back before these witnesses leave.

I would ask unanimous consent to include a statement on prepackaged materials, a statement from Federal Express on this question and on S. 1904. Thank you very much.

Senator EXON. Without objection, that is so ordered.

Before I recognize Senator Gorton, I want to associate myself with the remarks you made about Mr. Dempsey with the clarification that I always listen very carefully to Mr. Dempsey.

Mr. DEMPSEY. I am not sure that that is something I really want every time.

Senator EXON. Senator Gorton.

Senator GORTON. Mr. Harvison, how much is the premium going to be on that $5 million worth of insurance? What is it in the comparable field to which it already applies?

Mr. HARVISON. Senator Gorton, there is no possible way that I could answer that question in quantitative terms. It is just like when you buy automobile insurance. If you are buying automobile insurance and you are domiciled in Boston, New York, a major metropolitan and what have you, and that is where you drive your automobile, very frankly the cost of that insurance is going to be rather high. If you are driving in Oregon or you domicile your vehicle in Oregon, it is going to be comparatively lower.

Overall trucking industry insurance premiums are set by the marketplace, and that marketplace comes down to various elements of risk that are weighed by both the primary underwriter and the excess underwriter. Those elements of risk may come down to, first of all, what are you hauling. Very candidly, in this day and age if you are a transporter and you are in the tank truck business and you are hauling, for example, liquified petroleum gases, such as propane and butane, you are going to pay an awful lot for insurance.

One of the aspects I am talking about right now is that food grade products, from the standpoint of a transportation hazards, are rated rather minimally by underwriters. This is not something that is going to tie up the beltway for 22 hours. So, from the standpoint of immediate transportation risk, I would suggest that the cost of insurance would be minimal.

Senator GORTON. But even where it is expensive in some of these examples you have given, it is your view that it has really not kept responsible people of relatively modest size out of the business.

Mr. HARVISON. Most assuredly not, and I can give you any number of examples along that line.

Senator GORTON. I am sorry that I was not here for all of the direct testimony, and in a sense I guess this is a question therefore for each of you to comment on if he wishes to do so.

But I believe, Mr. Farris, if I read the outline correctly, you felt that FDA was the better pick for the enforcement of any law like this one.

Are you or any of you concerned that if the Food and Drug Administration, rather than the Department of Transportation, is the primary enforcing agency that there might be a negative impact on the Nation's transportation needs as FDA has, of course, no concern over that need?

Mr. FARRIS. Let me make my position clear, Senator Gorton. I do not think that DOT needs to be the lead agency. I was a former Federal Highway Administrator, and my principal responsibility in dealing with the motor carrier industry was safety. That ought to be the lead part that DOT is fostered with.

Now, obviously, some cooperation could occur. There is a resource that ought to be taken advantage of. But to say that MCSAP inspectors that are out inspecting brakes and log books and lights and all of the other safety aspects and now drugs that will be a part of their responsibility will then do cargo inspection and make a determination on the spot of what is adulterating a food container or not is maybe being a little too broad for their responsibility.

Senator GORTON. You are speaking from experience.

Mr. FARRIS. Yes, sir.

But if you give them a list of material, as Mr. Harvison was saying, that ought not to be carried in a certain kind of a container, then they can verify that by looking at waybills and making sure that they are adequately listed. That is probably justifiable. But to have them ascertain whether a container is going to adulterate a chicken part is going beyond their training and their ability in my judgment. That responsibility has been assigned by Congress to FDA and to the U.S. Department of Agriculture, and they are the two agencies that ought to share the lead in this with the cooperation of the U.S. Department of Transportation.

Senator GORTON. Do any of the others of you have a comment on that?

Mr. DEMPSEY. I have a view, Senator, that is somewhat different from Mr. Farris', though I certainly understand the force of what it is that he is saying and it is clear that there has to be collaboration. But we have the concern that you identified, Senator, and this goes to a question that Senator Gore raised as well.

For example, take the utilization of the covered hopper fleet, the grain fleet. As the Chairman is well aware and as you are too, we have had shortages in grain cars. They are not as bad now as they used to be, but they are always a source of aggravation to the farmers and to elevator operators and to you who represent grain growing regions.

Now, fertilizer is carried in covered hopper cars, and grain is carried in covered hopper cars. And I cannot think of any reason why adequate cleaning of that equipment should not permit that to happen. DOT would full well understand the enormous impact upon the utilization of a covered hopper fleet that would occur if you did not permit that.

So, it is that kind of situation that we would be concerned about if the regulatory authority, that is, the framing of the regulations, were put in the hands, let us say, of FDA, though I understand full well that they have the expertise that requires their participation in that process.

Senator GORTON. Do either of you want to comment?

Mr. HARVISON. I will comment briefly, Senator, and that is from the standpoint of the problem in tank truck, it is not obviously a question of whether or not there was municipal waste or garbage. The question is really the propriety in its broadest context from the standpoint of toxicity and what have you in terms of the prior load.

And in meeting with both DOT and FDA well prior to these hearings, it is my firm belief that FDA indeed has the expertise to make these determinations. I agree wholeheartedly with Mr. Farris' recommendation that FDA should be the lead agency. Assuredly, DOT can make some contributions in terms of tank truck. It really does not go to MCSAP, but in terms of tank truck, I think DOT could play a role in coordinating with FDA. In our opinion, FDA should definitely be the lead agency.

Mr. TURNER. Senator, I would concur wholeheartedly with that whole approach. Our refrigerated carriers are already subject to inspection by USDA. So, they have an expertise that would already be applicable to this particular problem, and I would suggest we use it.

Senator GORTON. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator. I just have a couple of questions.

First, I will direct this to the representative of the trucking industry. I take it from your testimony that you do not believe that there is a widespread problem in this area, but from your testimony I took it that each of you were very much concerned about the problem, widespread or no. Is that correct?

Mr. FARRIS. That's correct.

Mr. HARVISON. Absolutely.

Mr. TURNER. Definitely.

Senator EXON. Let me ask this question. Do you think that deregulation of the industry or partial deregulation of the trucking industry has had any effect on this problem one way or the other?

Mr. FARRIS. Senator Exon, I cannot relate this to deregulation. Obviously deregulation has produced a lot of new carriers. It has produced an environment in which we have entrepreneurs trying to make a living, make the fullest advantage of their investment, the resources that they had placed into their jurisdiction, but to translate that into a transportation of a solid waste problem I think is stretching the issue.

This is, as I think Mr. Turner adequately pointed out, a real social problem. We better make sure we are looking at also the

generators. And again, I would encourage you, sir, to have some of those here so that they can share their problems with you if we do something on the transportation side and how does that affect what they are trying to accomplish within their community and also those who receive it over on the disposal side. They are two elements that are missing in this whole coefficient so far in this testimony today. I would encourage you to do that. So, I think we need to look at the whole picture.

We are simply saying as the transportation element we stand ready to cooperate. We do not see that there is any justification for hauling this kind of material in a unit that is designed to haul food, but we need to move very cautiously because, as Mr. Harvison pointed out, there are elements that can adequately be mixed, adequately packaged. Do that and you have solved 90 percent of your problem. We ought to look at that very seriously. What does that cost? Who ought to do it? How does it impact a city or county is a real question that ought to be adequately explored before we jump forward with just putting the total burden on the transportation element of this whole question.

Mr. HARVISON. Senator, from the tank truck side, this is not a packaging problem. This is a safety problem.

I would respectfully submit that the full impact of economic deregulation hit our industry in about 1982. Between 1982 and the present day, our industry has had one profitable year. One-third of my members have gone out of business either directly or indirectly. Over half of the companies who manufacture tank trucks, the vehicles themselves, have gone out of business.

When I came into the industry in 1965 as an assistant to my predecessor, we were hauling water white chemicals at 89 cents a mile. Today we are hauling water white chemicals at 89 cents on a mile. The economic pressures to scrimp and cut and cut and paste on an operations basis are there.

I have talked to the gentleman whose carrier out in Washington started all this. He is not a member of the association, never has been a member of the association. Very brief conversations with him have led me to believe that it was the deregulatory pressures that, first of all, put him into business and led him to these practices. And he is continuing today with the same customer, at least according to the Seattle Post Intelligencer.

Senator EXON. Mr. Turner?

Mr. TURNER. Mr. Chairman, I would concur with Mr. Harvison about the economic pressures. The truckload sector is the easiest sector to get into, as I know you are aware. One truck and you're in. Prior to 1980, there were approximately 17,500 certificated carriers. The overwhelming majority were truckload carriers. Depending on the latest ICC figures, there are maybe 40,000 certificated carriers.

Most of my members are moving midwest to east coast, midwest to west coast, et cetera, coming out of the Great Plains, your area, with food. We all know that is the food basket. We get to the east coast and because of this huge influx of carriers, everybody is competing. That is good for the marketplace.

However, when you get to the east coast, there is a total imbalance of freight going back to the midwest. We all know that there

are not that many things produced on the east coast that will equally balance the number of trucks coming in. In asking around, my individual members tell me that there could be as many as 2,000 trucks a week coming empty off the east coast. So, they need a backhaul or they don't make money.

That does not mean we condone this practice. We don't. But I thank you for asking the question, and I hope that you see that there are huge economic pressures with the huge influx of competition, most of which came in my sector of the industry.

I would also add that the solid waste disposal problem has grown, and in the last couple of years, it has gotten out of hand. And it provided that needed backhaul for that economic relief. And I think in a nutshell that is why we are here today.

Senator EXON. Mr. Dempsey.

Mr. DEMPSEY. Mr. Chairman, as you know, whenever I get an opportunity to put in a good word for railroad deregulation, I do it. So, I will do it here.

Senator EXON. I knew you couldn't pass up the opportunity.

Mr. DEMPSEY. To the extent that we have the ability to contract now, the ability of railroads to get into the business of transporting solid waste has been greatly enhanced, and that was given to us, of course, in the Staggers Act.

And then in a more general way, to the extent that deregulation has led to better financial health for the industry, as it has, the railroads are better able to absorb the cost of something like an empty backhaul.

Senator EXON. Thank you. I excluded you from that question because I knew that is what you would say.

I didn't object to it, but I think your attitude shows a significant difference between various modes of transportation. The railroad industry, after all, is controlled by a minuscule few compared with the people in the trucking industry, and therein lies one of the problems that we have.

Gentlemen, I have no further questions for you.

Thank you very much for being here and for your excellent testimony. And you are excused.

The final panel today I would ask to come forward now, and while they are coming to the table, I thank them for their patience for this hearing that has been very informative in the opinion of the Chairman and I think members of the committee as a whole.

We are going to wind up now with the fourth panel, the last panel, but not the least panel. And I am very pleased to call Ms. Ruth Walton, the vice president of logistics for the J. R. Simplot Company; Mr. Jim Barber, director of corporate transportation for the George A. Hormel Company; and Allen Moore, one of our former coworkers around here. Welcome to you, Allen. And Allen is the National Solid Wastes Management Association's president.

We will begin with you, Allen.

STATEMENT OF ALLEN MOORE, PRESIDENT, NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

Mr. MOORE. Thank you very much, Mr. Chairman, Senator Gorton. It really is a pleasure to be back in a familiar place among

old friends, though in a new role. As you know, I am now in the garbage business. Some of my friends accuse me of making messes during my years in government. Now I'm in the business of cleaning up.

My association, the National Solid Wastes Management Association, represents about 2,500 private waste services companies in North America. We haul municipal and hazardous waste. We recycle it. We incinerate it. We dispose of it. We build the equipment to do these things. Private companies of this kind today collect most of the country's residential and commercial waste, and operate about half of the solid waste disposal capacity in the U.S.

The issue before us today is a very important one. I commend you for the hearing. I commend both Senators Gorton and Gore for their leadership in introducing the two bills that we are talking about today.

I think what we are really talking about is action that is necessary to ensure the safe and clean transportation of food. That really is the subject: safe food and other consumer goods that come into contact with human beings.

Our industry, our members, transport waste from collection and generation sites to disposal sites. The great majority of the waste transport vehicles that we use, the traditional garbage trucks, are not capable of or suited for transporting anything else. By and large, our industry is not in the backhaul business. The few who are do not backhaul food.

For example, one of our members, a man named Wayne Trewhitt who operates out in the Northwest, has a Vancouver, British Columbia operation where he hauls waste over 200 miles to a landfill. He backhauls wood pulp which is brought back into the Vancouver area to be made into paper.

Now, obviously, there is backhauling of waste going on. It is a direct result of inadequate waste disposal capacity in certain parts of the country. I think it is important to keep in perspective the geographic region that we are talking about. By and large, it is New Jersey and New York waste that is going to six or seven states. It is a relatively new phenomenon of the last two or three years.

Long-haul trucks are the ones doing the backhauling, and I have no quarrel with the economic necessity for them doing that. I maintain, however, on the basis of what our study has shown and what I have heard this morning, that the problem is much bigger than municipal waste. It is older and in a lot of ways scarier than I first thought—than a lot of us thought—because if there were no waste backhauling, none, we would still have a problem.

In many ways, the pressure to backhaul shows some signs of declining as, the recipient states are beginning to say, "No, we won't take your waste, New Jersey and New York." Some of our members who own landfills are saying, "No, we won't take that waste" or "we won't take it out of a reefer." The state governments and the governors are saying no. So, New Jersey and New York and others who are watching their disposal capacity rapidly decline are also seeing their escape valves closing up.

But even if all backhauling of municipal waste stopped, we would still have a problem. I think that is what this hearing and your

work, Senator Gorton, have shown. There are weaknesses in our system to ensure the wholesomeness of food that is transported in trucks and other vehicles. There is apparently no way to be absolutely sure that the truck that picks up or delivers sides of beef, or fruit, or vegetables, or other exposed or packaged solid or liquid food is, in fact, not contaminated with the residues of previous loads, whatever those loads. Our food can be tainted by residues from previous loads of other foods, and I would suggest the risk nationwide is far greater from such loads given the regional nature of the backhauling of waste.

A refrigerated truck, for example, might have been used on a prior load to carry infectious waste, very carefully, expensively and safely packaged as is required by many states. It might also have been used to carry beef or chicken that spoiled and rotted on the side of the road when the truck was disabled and awaiting repairs.

An unrefrigerated trailer might have been used to transport shredded computer paper to a recycling center on one load, posing no significant risk to human health, or it might have been used to transport cartons of milk and apple juice that were pierced during loading or unloading, leaving residues that could host pathogens and contaminate the next load.

A cargo tank might have been used to transport saccharine or paint or any number of other liquids that are not wastes but are incompatible with wholesome food.

What we need is a system that will ensure that trucks which are used to transport food are free of residues of incompatible substances which they had been carrying before.

I would respectfully suggest that the two bills, S. 1751 and S. 1904, which I think ideally can be blended together, do not go far enough in dealing with the broader threats to safe and clean transportation of food. I think that a modified composite bill could be developed that would more effectively achieve those goals. I would like to make a few suggestions in that regard, Mr. Chairman.

First, I would suggest that you expand the definition of food to include food additives, drugs and devices, as those terms are defined in the Federal Food, Drug and Cosmetic Act of 1934.

Second, I would suggest you strictly limit the eligibility of vehicles to carry food to those vehicles that meet standards for cleanliness. The focus should be on vehicles used to carry food.

Third, I would direct the Secretary of Transportation, in consultation with other appropriate officials—and we have had some discussion today about the need for inter-agency action here, and I would strongly support that notion—to establish two categories of substances carried by vehicles: one, those that are in all circumstances incompatible with food; and two, those that may either be effectively isolated or removed by cleaning procedures so that the subsequent use of the same vehicle to transport food poses no risk to human health.

Fourth, I would direct the Secretary to specify required cleaning procedures and standards for vehicles used or offered for use to transport food. Maybe the suggestions earlier about the poultry and beef procedures could be a model. Enforcement, though, is the key, as you suggested in your questioning, Mr. Chairman.

Fifth, I would require vehicles that are offered for use to transport food to be marked as such and require that manifests be maintained to identify the trips and loads of such vehicles. I was intrigued with Mr. Dempsey's description of the labeling with letters that they use on their rail cars. The question I have is whether labeling in and of itself assures cleanliness. How is it enforced to ensure that it always stays class A clean? I don't know the answer.

Sixth, I would provide for enforcement of the cleanliness standards, including inspection and wash tickets showing that a vehicle has been cleaned before food is loaded on that vehicle.

Seventh, I would clarify that only those vehicles offered for use in transporting food need comply with the cleaning, manifesting and other requirements designed to ensure the safe and clean transportation of food.

And then finally, of course, I would include many of the provisions in the two bills that deal with waivers, preemption, powers of the Secretary, penalties, specific relief, coordination and training.

Thank you very much, Mr. Chairman.

Senator EXON. Thank you, Mr. Moore, for your good testimony. And since you were once very active on this committee, any specific language, in addition to what you have just said, that you would like to submit for consideration as part of the bill that will eventually come out, why, we would appreciate it very much.

Mr. Barber.

STATEMENT OF JAMES A. BARBER, DIRECTOR OF TRANSPORTATION-DISTRIBUTION, GEO. A. HORMEL & CO., ON BEHALF OF THE AMERICAN MEAT INSTITUTE

Mr. BARBER. Mr. Chairman, Senator Gorton, my name is James A. Barber. I am the Director of Transportation-Distribution for Geo. A. Hormel & Company, a major food processing company that is a member of the American Meat Institute. Today I am pleased to appear before this subcommittee on behalf of the American Meat Institute to make a statement regarding the important matter of safe and proper food transportation by motor carriers in this country.

Needless to say, the American Meat Institute and its membership were appalled to find evidence that some motor carriers have hauled dangerous chemicals and solid municipal waste in the same transport trailers that they use for the shipment of food, food-related products and food packaging supplies.

Accordingly, some of its members, including Hormel, initiated an aggressive stance with the motor carriers requiring their written certification that they are not engaged in the transport of such objectionable materials and that the trailers in their fleets are properly maintained for use in the transportation of food products and supplies. If any motor carrier was unwilling or failed to provide such a written statement or if there was evidence of either past or present hauling of waste materials and other likely contaminants, they were promptly eliminated from use as an approved carrier.

This action I think illustrates the industry's continuing emphasis upon self-regulation in the area of food safety as it pertains to the transportation of food products, and at least on a temporary basis

serves to enhance the safety of transported food to both the food processors and consumers. However, in our longer range view, definitive Federal law is certainly required to properly protect the food industry and consumers from those apparent few in the motor carrier industry that pursue these unacceptable practices. The public needs to have assurance that this country's food supply is wholesome and not threatened by contamination in the transportation and distribution of food products to consumers. Accordingly, the American Meat Institute recommends several matters for the subcommittee's consideration.

With respect to liability for these practices, to protect reputable companies in the food industry which in good faith retain the services of certificated motor carriers for the movement of products to consumers in non-contaminated transport trailers, liability provisions in legislation dealing with this problem should probably include all persons or entities which knowingly use or offer for use a transportation vehicle which at any previous time transported waste materials or any other likely contaminant to food supplies or products. Those who engage in such practices should be accountable pursuant to law, should understand that there will be penalties for such activity and that the law will be enforced in case of violations.

With respect to motor carrier categories, proposed legislation has to date regarded just refrigerated trailers and tanker trailers as the root cause of the backhaul problem. Yet, we believe that dry van trailers are equally capable of such practices, thereby possibly contaminating those food product containers which do not require special trailers or temperature control, as well as the food manufacturing supplies they carry to the manufacturer, such as boxes, cans, jars, packaging films and so on. We believe, therefore, that specific standards must apply to the motor carrier categories of refrigerated trailer, tanker trailer and dry van trailer and possibly other modes of transport to assure the elimination of any further potential abuse.

And finally, we would suggest that legislation provide for a perpetual cargo history certification register of prior loads. As a legal record, this register would serve to protect the carrier, the shipper, receiver and consumer if at any time it is requested for cargo history verification by any of these parties or the Federal agencies.

In conclusion, we urge the subcommittee to objectively review and possibly incorporate these several considerations which we have been privileged to bring to your attention.

Mr. Chairman and Senator Gorton, in the testimony today from the Department of Transportation—you expressed amazement at their position. I share that amazement because we are not addressing an issue of boundaries. We are addressing an issue that confronts us all. We are talking about a situation that is involved with three values and that is duty and that is honor and that is country.

Thank you, Mr. Chairman, for the opportunity to appear before this subcommittee.

Senator EXON. We are awfully glad to have you. Thank you for your statement.

Ms. Walton, thank you for your patience. We are just delighted that you are here today, and would you please continue at this time.

STATEMENT OF RUTH E. WALTON, VICE PRESIDENT, LOGISTICS, J.R. SIMPLOT CO., ON BEHALF OF THE AMERICAN FROZEN FOOD INSTITUTE, ACCOMPANIED BY FREDERIC WOOD, COUNSEL

Ms. WALTON. Thank you, Mr. Chairman, Senator Gorton.

My name is Ruth Walton. I am Vice President, Logistics for the J. R. Simplot Company, and with me at the table today is Mr. Frederic Wood, legal counsel for the American Frozen Food Institute. I would like to ask that my written statement be entered into the record since I will just briefly comment from that.

Senator EXON. Without objection, that is so ordered.

Ms. WALTON. Thank you.

The Simplot Company is a processor and marketer of frozen foods headquartered in Boise, Idaho. We have processing plants in several states. Oregon, Washington, Idaho, California, and North Dakota.

I am appearing here today on behalf of the American Frozen Food Institute, known as AFFI. It has 500 plus members from the frozen food industry. It is a national trade association representing frozen food processors that account for about 80 percent of the frozen food production in the United States today.

AFFI and its member companies have always been concerned with the protection of the quality of the entire range of frozen food products that they manufacture and distribute throughout the United States. The distribution of frozen food products depends on the careful performance of a whole chain of logistics functions from the source of the raw product through manufacturing and warehousing to the point of ultimate sale and consumption.

One of the essential links between the various steps in this process is the transportation system. Among the major elements of that system are the services provided by a wide variety of operators of motor vehicles. The operators that provide motor vehicles to the food industry include for-hire fleets operated under common carrier or contract carrier authority, and some manufacturers of food products transport them as private carriers. Others utilize trailers that are transported by railroads in their trailer-on-flat-car service. Whatever the source, all manufacturers rely on the carrier to provide vehicles that are safe, clean and suitable for transportation of their products throughout the distribution chain.

AFFI members already take careful steps to ensure that refrigerated vehicles used to transport their products are clean and suitable for such service. For example, at the Simplot Company, we have submitted written requests and instructions to motor carriers that supply us with equipment specifying that no vehicle that has hauled solid waste or hazardous materials may be delivered for loading. These provisions are also included in the contracts that we have with such carriers.

In addition, we do have a written vehicle inspection procedure that is followed by our warehouse personnel prior to vehicle loading.

AFFI and its members are very supportive of the basic thrust of the bills being considered by this subcommittee which is to provide additional protection for the quality of all food products while they are being transported. AFFI supports the basic philosophy of H.R. 3386 and S. 1751, and it agrees with the changes already made in H.R. 3386 by the House Public Works Committee. We urge this subcommittee to incorporate these changes into S. 1751. We particularly support the need for a national uniformity provision because our food distribution is national in scope. We also favor specific inclusion of a list of materials that could be transported in the vehicles that would not make food unsafe.

However, AFFI and its members and members of the Coalition for Safe Food Transportation Initiative, representing a very wide range of food industry interests, believe that additional changes in the bills are essential.

We believe in the protection of all food products, and we strongly object to any limitation of the legislation to only refrigerated vehicles in cargo tanks. The concern and the focus of this legislation is and should be the safety of the great variety of food products being transported throughout the Nation. Therefore, we urge the application of the requirements of the legislation to dry vans, refrigerated trailers, tank trucks and other vehicles transporting food products.

In addition, the bill needs to be modified to make it explicitly clear it is equally applicable to each of the various elements of the distribution chain. Each person involved in that chain that arranges for or provides the transportation service, whether a shipper, distributor, carrier, broker or receiver, should have a share in the responsibility for insuring that the vehicle will not affect the quality of food product being transported.

We agree that the Secretary of Transportation should be responsible for implementing and administering the program. However, we think that it is important that the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency be involved in developing these standards because their expertise would be invaluable in developing the administrative regulations.

One of the most important revisions to the bill is the addition of a requirement to establish standards governing the decontamination of any motor vehicle that has been used to transport any prohibited materials. It does not make sense to forever ban a vehicle from use in the transport of food products if the vehicle can be and is safely decontaminated before it is used to haul food products.

The bill should also require any person providing a motor carrier vehicle for use in the transportation of food products to provide a written certificate or guarantee to the person using the vehicle. This should state that the vehicle has not been used to transport prohibited materials or, if it has, that the vehicle has been properly decontaminated.

These amendments to the bill are very important to the food industry. We obtain transportation services from a great number of carriers operating both in intrastate and interstate commerce, and

many authorized carriers also lease vehicles from third parties. We are utterly dependent on the supplier of transportation vehicles to take the primary responsibility for ensuring that the vehicle is safe for the transport of food.

Thank you, Mr. Chairman, for this opportunity to present our concerns to you about this important issue, and we do urge you to give careful consideration to our proposals. We would like to offer the continuing assistance of the American Frozen Food Institute as you address these issues.

[The statement follows:]

STATEMENT OF RUTH E. WALTON
ON BEHALF OF AMERICAN FROZEN FOOD INSTITUTE

My name is Ruth E. Walton. I am Vice President, Logistics for the J. R. Simplot Company, with offices in Boise, Idaho and processing plants in Oregon, Washington, Idaho, California and North Dakota. I am appearing today on behalf of the the American Frozen Food Institute ("AFFI") and its 500-plus member companies. I have been involved in planning and managing physical distribution for the J.R. Simplot Company for the last fifteen years.

AFFI is the national trade association representing frozen food processors, their suppliers and marketers. AFFI processor members account for 80 percent of frozen food production in the United States.

AFFI and its member companies have always been concerned with the protection of the quality of the entire range of frozen food products they manufacture and distribute throughout the United States. These products are distributed to grocery stores, restaurants, fast-food chains, food-service operations such as hospitals, airline catering services, school systems, and a whole host of other operations that are an important component of the daily lives of this country's consumers.

The distribution of the multitude of frozen food products manufactured and prepared by members of the American Frozen Food Institute depends on the careful performance of a whole chain of logistical functions, from the source of

the raw agricultural products through the manufacturing and warehousing facilities, to the point of ultimate sale and consumption. Of course, one of the essential links between the various steps in the process of transforming the produce of the American agricultural industry into frozen food products used by the American consumer is the transportation system. And among the major elements of that transportation system are the services provided by a wide variety of operators of motor vehicles. The vehicles used to provide that transportation service are required to be equipped with refrigeration machinery, insulation and other fixtures to maintain the appropriate temperature to preserve the quality of the frozen food product involved.

All members of the food industry obtain the use of motor vehicles from a wide variety of sources. The operators that provide motor vehicles and transportation services to the food industry include for-hire fleets operated under common carrier or contract carrier authority granted by the Interstate Commerce Commission and various state regulatory authorities. In addition, some manufacturers of food products transport them as private carriers. Others also utilize trailers that are transported by railroads in trailer-on-flat-car service before or after being transported over the highways. Whatever the specific source and nature of the motor vehicles used to transport their food products, all manufacturers rely on the carriers to provide motor vehicles that are safe, clean and suitable for the transportation of their products through the distribution chain to the ultimate consumer.

AFFI members already take careful steps to ensure that the refrigerated motor vehicles used to transport their products are clean and suitable for such service. For example, the J.R. Simplot Company has submitted written instructions to motor carriers supplying them with equipment specifying that no vehicle which has hauled solid waste or hazardous materials may be delivered for

loading. In addition, the J.R. Simplot Company has developed written vehicle inspection procedures which are followed by warehouse personnel prior to vehicle loading.

AFFI and its members are very supportive of the basic thrust of the bills being considered by this Subcommittee, which is to provide additional protection for the quality of all food products while they are being transported. The House Committee on Public Works and Transportation on December 1, 1989 reported favorably on H.R. 3386 which addresses these concerns. That bill is a revised and amended version of the bill originally introduced by Representative Clinger of Pennsylvania. H.R. 3386 is now before the House Committee on Energy and Commerce, which is also considering similar legislation introduced by Representative Luken. As you know, S. 1751, introduced in the Senate by Senator Gorton, is a companion to the bill introduced by Representative Clinger.

AFFI supports the basic philosophy of H.R. 3386 and S. 1751, and it agrees with the changes already made in H.R. 3386 by the House Public Works Committee. The changes made by the House Public Works Committee to the original bill as introduced by Representative Clinger are explained in the report issued by that Committee. AFFI urges the Subcommittee to incorporate the amendments made by the Public Works Committee into the companion bill, S. 1751, for the reasons stated in that Committee's report. We particularly support the need for a national uniformity provision because our food distribution system is national in scope. The prospect of fifty varying requirements in the transportation of food products would be inefficient and intolerable. We also favor specific inclusion of a list of materials that could be transported in the vehicles and would not make food unsafe.

However, AFFI and the other members of the Coalition for Safe Food Transportation Initiative, representing a wide range of food industry interests,

believe that additional changes in the bills are essential. The balance of this statement is an explanation of the additional amendments to both H.R. 3386 and S. 1751 that we believe will provide a balanced and comprehensive treatment of any concerns that might be created about the quality of the nation's food supply by the ill-advised actions of a very small number of motor vehicle operators. Some of these additional amendments are based on provisions contained in H.R. 3634, introduced by Representative Luken and being considered by the House Energy and Commerce Committee along with H.R. 3386. Both groups of changes are incorporated in the draft bill attached to this statement.

Protection of All Food Products

We strongly object to any limitation of the legislation to only refrigerated vehicles and cargo tanks. The concern and the focus of this legislation is and should be the safety of the great variety of food products being transported throughout the nation. If harm could result from solid waste or hazardous materials being transported in vehicles also used to transport food products, it could occur in all types of vehicles. The Coalition, therefore, urges the application of the requirements of the legislation to dry vans, refrigerated trailers, tank trucks and all other vehicles transporting food products. Whether the food products are transported in refrigerated vehicles or not, all consumers deserve and need protection from the potentially harmful effects of foreign materials transported in the vehicles.

In addition, the bill needs to be modified to make clear it is equally applicable to each of the various elements of the distribution chain. Each person involved in that chain that arranges for or provides the transportation service, whether a shipper (as a manufacturer, distributor, or warehouseman), carrier, broker, or receiver, should have a share in the responsibility for ensuring that the vehicle will not affect the quality of the food product being transported by the

carrier. That is why we urge that the bill be amended to explicitly apply each of its operative provisions to "carrier, shipper, receiver, broker or other person" involved in the transportation.

Administrative Authority

While we agree that the Secretary of Transportation should be ultimately responsible for implementing and administering the program embodied in this legislation, we think that it is important that the Secretaries of Agriculture, and Health and Human Services, and the Administrator of the Environmental Protection Agency be involved in developing the standards. Their expertise and involvement in the area of food safety and environmental protection would be invaluable in developing the administrative regulations.

Decontamination Procedures

One of the most important revisions to the bill is the addition of a requirement that the Secretary of Transportation establish standards governing the decontamination of any motor vehicle that has been used to transport any prohibited solid waste or hazardous material. It does not make sense to forever bar a motor vehicle from use in the transportation of food products just because it has been used to transport solid waste or hazardous material, if the vehicle can be, and is, safely and thoroughly decontaminated before it is used for the transportation of frozen foods or any other food product. If the Secretary of Transportation, after consulting with the Department of Agriculture, the Food and Drug Administration and EPA, concludes that such decontamination procedures can be performed, so that a motor vehicle would not make food or food products unsafe if it is used to transport such products, then the operator should be allowed to return the vehicle to such transportation service after fully complying with the procedures established by the Secretary.

Certification Procedures

The bill also should be amended to require any person providing a motor vehicle for use in the transportation of food products to provide a written certification or guarantee to the shipper, receiver or other person using the vehicle. The certification should state that the vehicle has not been used to transport prohibited solid waste, or, if it has, the vehicle has been properly decontaminated. Related provisions in the attached draft bill state that no person shall be subject to the civil or criminal penalties of the bill if he establishes that he used the vehicle after receiving a certification or written guarantee from the person furnishing the vehicle.

These amendments to the bill are very important to the food industry. Members of the industry obtain transportation services from a great number of authorized motor carriers operating in both interstate and intrastate commerce. In addition, many authorized carriers lease motor vehicles from third-party sources, such as owner-operators, other carriers and even private carriers. For these reasons, manufacturers and distributors of frozen foods and other food products are utterly dependent on the persons furnishing the vehicles to take primary responsibility for ensuring that the vehicle is safe for the transportation of food products. Simplot and other food processors cannot be expected to continuously monitor the use of the vehicles furnished to them by the carriers. They should be able to rely on the carriers and others who furnish vehicles to comply in good faith with any requirements that are imposed by law with respect to the transportation of solid wastes and hazardous materials in any vehicles that might later be tendered for use in the transportation of food products.

This certification provision, and its companion provision allowing users of transportation services to rely on such certification without fear of exposing themselves to liability, are modeled on similar provisions in Section 303 of the

Food, Drug and Cosmetic Act, 21 U.S.C. §333, and the implementing regulations adopted by the Food and Drug Administration. I understand that this allows food processors to accept raw materials from suppliers under a certification that they are not adulterated. Food processors also should be permitted to rely on certifications or guarantees from their suppliers of transportation services that the vehicles are suitable and safe for the transportation of food products, and that they are in compliance with all applicable requirements imposed by this bill. In addition, the provisions of the bill regarding the criminal penalties need to be modified to require a showing in any prosecution of the existence of a specific intent to violate the prohibitions established by the bill, so that each of the participants in the distribution chain are only responsible for that portion of the chain over which they exercise control.

Conclusion

Thank you for the opportunity to present our concerns to you about this important issue. We urge you to give careful consideration to our proposals.

Senator EXON. Ms. Walton, thank you very much, and thanks to all of you for excellent statements.

I have a few questions.

You have been very helpful when you say we have to do even more and we are going to take careful consideration before we draft the final bill that I think will pass out of the committee. That is why we hold these hearings. You have been helpful, as have the other panelists.

When you were making your presentation, Ms. Walton, I got to thinking about what protection do you or can you as a company provide to make your quality of product the same quality that is taken home from the grocery store. Example: let's say Boise, Idaho produces something and you put that in a contaminant-free truck and you ship it to Chicago, Illinois. I do not know the distribution process, but I imagine it goes to some kind of a warehouse, and then that warehouse is the one that eventually deliver your frozen food product to the grocery shelf.

What happens after it leaves the factory free of contamination, goes contamination-free in a refrigerated truck to Chicago, Illinois, then to a warehouse and then eventually to the grocery store?

How far can we and should we go on this? Is there a possibility that it could be contamination-free all the way and then hauled from the warehouse to the grocery store with chemicals that are sold at the grocery store? Is there any attention to that problem, and can you help me out in that concern that I thought of?

Ms. WALTON. Well, Mr. Chairman, there certainly would be the possibility for contamination anywhere along that chain if products were not properly cared for.

The industry is approaching similar concerns through its associations. There are associations representing all of those links in the chain. And they have published handling procedures and manuals, and there are also inspection services that one can contract with on a private basis. They are not mandated, but they are available, such as the American Baking Institute, to come in as a third party and inspect warehouses or other parts of the distribution chain. So, there are some strong associations that do attempt to see that proper procedures are available to be followed.

Senator EXON. I would like to ask you, Mr. Barber, and you, Ms. Walton, this question. Are there standard wash-out, cleanup facilities? Is there a standard wash-out requirement? For example, when a food company uses its own trucks to haul its own product, is there a wash-out or cleanup requirement of some kind, and if so, can you briefly state what that is?

Mr. BARBER. Yes, sir. I would be glad to respond first.

We are no longer in the private carriage business line haul, as we were at one time. But when we were, we had our own washing facilities and at the conclusion of every load, that trailer was washed out and inspected.

Now, in the absence of being in the business as a private carrier, we still pursue those same inspection procedures when a vehicle arrives at our location for loading. It is not just a matter of sighting into the vehicle to see if there is any noticeable residue on the floor. We actually inspect the vehicles to make sure that they have been washed and they are clean and suitable for the receipt of our products.

Ms. WALTON. I cannot add too much to that statement. We have similar procedures. We do have our own washing station for the few trucks that we use that we own to haul product from warehouse to warehouse.

As private carriers or common carriers deliver equipment to our warehouses—their equipment does undergo the inspection of our warehouse personnel visually, and they are also looking for off-odors, things of that sort. If there is anything at all of concern that is noticed by a warehouse supervisor, then those trucks are sent to be washed, and the driver has to bring back a notice from the cleaning station that that has been done. Then they are reinspected at that point.

Senator EXON. Mr. Moore, do you have something to add?

Mr. MOORE. I am told, Mr. Chairman, that there are approximately 300 cleaning facilities in the U.S. of which about 120 are capable of cleaning a truck to make it safe to carry food. And needless to say, most of those 120 are located in close proximity to food shipment centers.

Senator EXON. Thank you.

Let's follow up, Mr. Barber, on this cleaning proposition to kind of see where Hormel is coming from on this because I would imagine that Hormel would be quite similar to your numerous competitors in your area.

If documentation confirms—and I emphasize if documentation confirms—that proper cleaning has taken place between the hauling of a chemical or a chemical agent or even solid municipal waste, if it could be confirmed that the truck then is free of any

contaminants, would your company Hormel still insist that carriers hauling your product not engage in transportation of chemical or solid waste?

Mr. BARBER. Yes.

Senator EXON. I have just two more questions that I would like to ask you, Mr. Moore.

What about wash-out or cleanup facilities near landfills? Do members of your industry support or encourage this, and are there cleanup and wash-out facilities near landfill sites?

Mr. MOORE. I think there are some, Mr. Chairman. I would suggest, though, that most of the vehicles that go to landfills are short-haul vehicles that are turning around and going right back to fill up with the same kind of waste that they just dumped. This phenomenon of long-haul transport or the non-dedicated truck is new. It is modest. It is minor in size. I think it would be a mistake to say you must build a cleaning facility at landfills. If you are going to do that, you're not putting your cleaning where you need it.

Senator EXON. Then as a follow-up to that, Mr. Moore, in response to the press reports of garbage backhauling that we have heard a lot about today, how many members of your industry now refuse to unload garbage or similar refuse into your dump sites?

Mr. MOORE. That come in from out of state?

Senator EXON. Well, come in from any place.

Mr. MOORE. Well, of course, if you are in the landfill business, you are in the business of taking waste. What we are seeing happening, though, is that more and more of our members who need to and want to get along in a local community are declining to accept, or limiting their acceptance of, out-of-state waste. To the extent that the local community feels that it is being taken advantage of by receiving waste coming from long distances away, many of those facilities on their own are saying no.

Senator EXON. I think you misunderstood my question. Let me try and phrase it again.

Are any of the people in your industry refusing to unload wastes from refrigerated vehicles?

Mr. MOORE. Yes, they are, Mr. Chairman.

Senator EXON. Is it widespread?

Mr. MOORE. I do not have any numbers for you. I know that some of the major companies have made it company policy that they will simply not unload a reefer.

As we have heard today, reefer truck owners, as well as the people who rely on reefer trucks are going through a self-policing process. That doesn't provide all the protection that we require, but the reefer aspect of the problem, which is a small piece of the larger problem is beginning to go away. That is not to say we do not need more to be sure it goes away entirely. As you said, even one truck is too many. But when the truck owners are saying no, when the food shippers are paying a lot more attention and saying no, and when the landfill owners are saying no, then that practice is going to disappear.

Senator EXON. The landfill owner is the bottom line chain in that hauling practice, and if, for example, there could be a uniform understanding that no garbage would be unloaded from a refriger-

ated vehicle to a garbage site, that would begin to help solve the problem.

I have one last question. And I think it will be a rather easy one for Mr. Barber and Ms. Walton to answer, or one of you can answer for both. But this is something that we do hear from time to time, and I want to get it on the record.

There has been some criticism leveled at shippers, that their only concern is getting the lowest possible dollar rate for hauling their goods from point A to point B. How do you respond to this criticism, at least representing the organizations that you represent?

Mr. BARBER. I will be glad to respond, sir.

That is totally untrue. We have a very established business procedure which when we have the opportunity of a shipment to our customer, we first address our carrier selection on what is the customer service requirement. We do not address what the price is because the service requirement may perhaps ask for a double team because of time and distance or some specialized type of packaging. And so, our direction is at the service point and not at the price. And those who do follow price are, of course, taking an action that is really not in their own best interests or that of the consumer.

Senator EXON. Ms. Walton.

Ms. WALTON. I would certainly concur with that statement, Mr. Chairman.

Senator EXON. Thank you very much.

Folks, we appreciate your patience, and we appreciate your excellent testimony.

And we are adjourned.

[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION,
March 29, 1990.

Hon. J. JAMES EXON,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce, Science, and Transportation,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR EXON: During your recent hearing on S. 1751 and S. 1904, you asked me about the practice of the waste services industry regarding the acceptance of garbage at landfills from refrigerated vehicles.

Your question led directly to a review of the practices of our members. Whereas most of our member companies already refuse to accept mixed municipal waste from reefers, they felt that as an industry we should respond promptly and directly to the concerns you raised on behalf of the Committee and the public.

I have enclosed a Resolution adopted unanimously by the Steering Committee of the Institute of Solid Waste Disposal, a component of the National Solid Wastes Management Association. The members of the Institute operate more than 325 municipal solid waste landfills in the United States and Canada. The Resolution reflects our practice and our continuing commitment to ensure that garbage arriving in refrigerated vehicles is not accepted at our disposal facilities.

Please include the Resolution in the record of the hearing, and know that it is a direct result of your personal leadership on this issue. I look forward to working with the Committee as you work to enact legislation to secure the safe transportation of food.

Sincerely,

ALLEN MOORE,
President.

Enclosure [1]

[1] The enclosure was not reproductible.

STATEMENT OF THE FEDERAL EXPRESS CORPORATION

This statement is offered on behalf of Federal Express Corporation the company which created the overnight air express small package industry. Federal Express is an important participant in the transportation of dangerous goods throughout the United States and internationally. In this regard, we want to express our appreciation to the Subcommittee for this opportunity to review our views on proposed Senate Bill 1904.

Federal Express Corporation transports an average of 1,100,000 packages a day in our integrated air and ground express system throughout the United States. Since 1974, Federal Express has offered a service transporting those substances which are classified as "dangerous goods" by the United States Department of Transportation within the United States. At the present time, we transport more than 5,000 self-contained packages with dangerous goods in the United States every day. Those packages contain different types of goods from radio-pharmaceuticals used in the treatment of cancer and other debilitating diseases to critical components and parts used in machinery by American industry. The goods transported can also include such routine, but regulated substances as the paint and household cleaners that are used on a daily basis by consumers all over the United States. In each instance, these goods are shipped in self-contained packaging. We do not engage in the bulk transportation of non-separately packaged dangerous goods. The packaging requirements for the goods are prescribed by the United States Department of Transportation. In the operation of our system and our experience, the co-mingling of hazardous materials in individual self-contained packages of food has not been at issue.

Currently, these goods move through the Federal Express system by procedures that are substantially consistent with the handling that is received by our other

packages. While some specialty sort operations are conducted, these packages are moved throughout our system in unit load devices ("ULDs"). The members of the committee may be familiar with these devices that are commonly called aircraft containers. These devices facilitate the speedy loading and unloading of Federal Express aircraft and trucks throughout the United States and make the daily delivery of packages by 10:30 a.m. possible.

From a review of Senate Bill 1904 and the background information, it is apparently not the intention of this legislation to interrupt the system of dangerous goods transportation used throughout the United States by Federal Express or other carriers of prepackaged dangerous goods. The stated intention of this legislation is to protect the American public from cross utilization of cargo tank vehicles or refrigerator motor vehicles without appropriate cleaning and handling between the transportation of food products and other nonfood products. However, as proposed, the legislation does not clearly define the term "cargo tank" and leaves such definition for the Department of Transportation. Under the circumstances, we are concerned that the final definition would include unit load devices within the definition of a cargo tank. As a result, we would encourage that the term "cargo tank" be defined in the line and that definition specifically exclude unit load devices or other aircraft containers used for the transportation of prepackaged goods.

In addition, we would also recommend that a specific exclusion of transportation of items prepackaged in accordance with the DOT standards be included in this legislation. Current DOT regulations protect the public from co-mingling of prepackaged items.

Finally, Section 14(b), does not permit review to be initiated by private parties on whom a state regulation is imposed. The review is limited to application by an appropriate state agency of full review of the state procedure.

Federal Express is committed to the safe transportation of prepackaged dangerous goods throughout its express system. Many of these items are critically important to American business and to the health and welfare of the American people. Their efficient and uninterrupted transportation in accordance with present DOT regulations should continue uninterrupted.

Statement of
The Honorable Thomas A. Luken
Chairman
Subcommittee on Transportation and Hazardous Materials
House Committee on Energy and Commerce

Before the
Senate Committee on Commerce, Science, and Transportation

9:30 a.m.
Thursday, March 1, 1990
Russell Office Building, Room 253

Chairman Hollings and distinguished Members of the Committee, I greatly appreciate this opportunity to appear before you this morning. I commend the distinguished gentleman from South Carolina for convening the hearing today on this critical issue of health and safety.

As with many of you, I have been around the halls of Capitol Hill for a number of years now. But just when you think you may have seen it all, you're in for a big surprise. That's how this issue of the safe transportation of food struck me when our Subcommittee began its investigation several months ago.

By now, all of you have heard the basic scenario: trucks and railroad cars are loaded one way with garbage, hazardous materials, or other dangerous commodities, but on the return trip -- or the "backhaul" -- they fill up with food, fruits, vegetables, juices, or other human consumption items. This practice can only be described as disgusting. And the bottom line is that Congress is going to have to step in to fix this problem.

Last October, we introduced a comprehensive hazardous materials transportation bill, H.R. 3520. Our bill included a provision which would eliminate the backhauling of food in vehicles used to transport garbage and other dangerous commodities. Early in November, our Subcommittee held extensive hearings on the bill, including a considerable focus on the backhauling issue. What we heard from our witnesses was shocking. I would like to include copies of the testimony we received at our hearing for your record today, so that this Committee may consider them in your further deliberations.

Let me briefly summarize some of the compelling testimony we received. First, we heard from Ms. Terri Moore, who heads up a citizen patrol group in Indiana. Ms. Moore's group, Hoosiers Opposed to Polluting the Environment, voluntarily monitors a

private landfill facility in Center Point, Indiana. The citizen group has become increasingly concerned and alarmed about the influx of garbage from other States. In monitoring their local dump (10 hours a day, 6 days a week), they discovered something even more incredible than having out-of-state garbage dumped in their local landfill. They found that trucks -- of all sizes and shapes -- were carrying garbage into the landfill and then turning around and picking up food and other items for human consumption.

For example, Ms. Moore produced pictures which showed flat bed trailers carrying garbage into the dump. She testified that such trailers are not cleaned and that they can be used to "backhaul produce such as melons, tomatoes, or potatoes." She showed us pictures of non-refrigerated semi-trailers with "garbage literally leaking out the back of the trailer." She described the cavalier and ineffectual cleaning procedures used for these dry vans and produced a picture of live maggots swimming in disinfectant after the truck was supposedly cleaned. From interviews they conducted with these truck drivers, Ms. Moore's group found that these trucks have been used to backhaul "soft drink and other beverage products, some produce, and packaged food products." Ms. Moore also exhibited pictures of refrigerated trucks full of garbage. Again, interviews with these drivers indicated that some of these reefers are then used to backhaul meat and produce. In fact, Ms. Moore testified that every driver of a refrigerated truck hauling garbage that she talked with claimed "to have previously backhauled meat following one or more of the Midwest garbage runs." Finally, Ms. Moore testified that her group believes that medical waste has also been involved in these practices. Her group has been unable to document these practices in writing, but they have been told by drivers that entire loads being dumped in the landfill consisted of medical waste.

Unfortunately, these practices are not confined to just the trucking industry. Alden Fitch, a food inspector with the Washington State Department of Agriculture, testified that he has witnessed this same practice in the railroad industry. One vivid example that he told us about is worth reiterating. A rail car was first used to transport an arsenic compound to Tacoma. The car was then loaded with feed grain and shipped to another location for use in dairy feed. Mr. Fitch testified that "Over one million dollars' worth of dairy cattle died" (from eating the contaminated grain) and that "milk was dumped for up to four weeks until it tested safe."

To say the least, these witnesses had a profound effect on our Subcommittee. I decided we needed to move separately on this issue and our Subcommittee marked up H.R. 3634 (taken from our comprehensive haz mat bill) on November 14. Shortly thereafter,

the House Public Works Committee reported H.R. 3386. There are differences in the ways that the two House Committees have approached this issue. For example, the Public Works bill only covers trucks, while our bill covers both trucks and railroads. But we have been working to come up with a tough, comprehensive bill that both our Committees can support so that we can stop these outrageous practices. We expect to complete our deliberations in the next few days and hope to bring a bill to the floor of the House in the very near future. I commend the tireless efforts of my colleagues from the Public Works Committee, including those who will testify here today, and appreciate their willingness to work quickly and cooperatively with our Committee.

In the meantime, the agencies which should be regulating these practices are sitting around pointing fingers at each other. The Department of Transportation has told us they oppose our bill, as well as the Public Works bill, because they don't think there is a problem and because they don't regulate food safety. The Food and Drug Administration and the EPA say that they don't know anything about transportation practices. The bottom line is that we're going to have to tell all these agencies to get together and issue regulations to prohibit these practices and then get all of them to enforce the law.

I know that various bills have been introduced in this body to stop these life-threatening practices. While there are differences in these bills, I am certain that we all share the same basic intent: let's put these unscrupulous transporters out of business if they can't tell the difference between trash and tomatoes.

I am confident that we can all resolve any minor differences we may have in ensuring the safe and sanitary transportation of our food. I again commend you for proceeding with this critical issue and I look forward to jointly producing a bill which the Congress can enact promptly.

28-950 0 - 90 - 5

CHRISTOPHER H. SMITH
4th District, New Jersey

Congress of the United States
House of Representatives
Washington, D.C. 20515

TESTIMONY OF REP. CHRISTOPHER H. SMITH (NJ-4)

BEFORE THE SENATE SURFACE TRANSPORTATION SUBCOMMITTEE

MARCH 1, 1990

Mr. Chairman, over 8 months have passed since I first introduced legislation to end the disgusting practice of backhauling garbage in trucks which then haul food. While there has been almost universal agreement on the need to end these most egregious practices, unfortunately, garbage backhauling is still legal and is still occurring everyday. I am here this morning to urge this committee and the full Senate, as well as my House colleagues, to join me in moving legislation swiftly through the Congress and over to the White House.

Mr. Chairman, for those of my colleagues who still have doubts about the need for legislation to stop garbage backhauling, I ask them to take a close look at these pictures.

In the first picture, you see a string of six tractor-trailers lined up to unload garbage at the Centerpoint Landfill in Indiana. The second truck from the left is a refrigerated truck. These trucks have become our nation's garbage fleet.

Yesterday, I confirmed that refrigerated food trucks continue to bring bales of garbage to this dump virtually every day. We need to stop them.

In the next picture, you get a close-up view of the refrigerated truck -- loaded with one ton bales of rotting, maggot-infested garbage. Remember, refrigerated trucks are design d specifically to transport food.

Finally, the last picture gives you a good idea of exactly what I mean when I call this practice disgusting.

Enough is enough. It's time for Congress to end this foul practice.

Mr. Chairman, I first introduced the Food Contamination Prevention Act in June of last year. Since then, two House committees have held hearings at which I've testified. Both the Public Works and Transportation Committee and the Energy and Commerce Committee have since marked up separate committee bills and are now in the process of reconciling the differences between these two bills.

While it now appears that floor action is forthcoming, I want to be certain that the legislation contains enough specific prohibitions and requirements to insure that the public is adequately protected from the threats posed by garbage backhauling.

My legislation, H.R. 3430, the Food Contamination Prevention Act, provides a comprehensive framework for ending this dangerous practice. I am pleased that it has received broad bipartisan support in the House, with 62 current cosponsors. Specifically, my legislation will:

1) Ban refrigerated vehicles from transporting hazardous waste, medical waste, terminal waste or recyclable waste.

2) Ban non-refrigerated vehicles which transport food, food additives, drugs, cosmetics, or devices from transporting any hazardous waste, medical waste or terminal waste.

3) Require non-refrigerated vehicles which transport recyclable waste or reusable waste and also food, food additives, drugs, cosmetics, or devices to meet certain health standards.

4) Require all vehicles which transport solid waste to be clearly labeled as such in order to alert the shippers.

5) Require all vehicles which transport solid waste to be cleaned immediately after unloading at landfills and incinerators.

6) Establish reasonable procedures to prevent the contamination of vehicles which could occur during the loading, transportation and unloading of solid waste (such as the use of plastic truck liners).

7) Establish criteria for three new classes of non-hazardous solid waste - Reusable Waste, Recyclable Waste and Terminal Waste.

Let me just emphasize a few key elements of my legislation that I want the committee to carefully consider.

First, both refrigerated and non-refrigerated vehicles which transport food or related products need to be prohibited from transporting garbage. It's important to cover non-refrigerated vehicles because many food items, such as potatoes or peanuts, for instance, may not need to be refrigerated during transportation.

Second, H.R. 3430 requires solid waste management facilities to take reasonable steps to protect vehicles from the many contaminants contained in municipal solid waste. Safeguards such as lining the vehicles before loading garbage will provide added protection for all future loads hauled by these vehicles. In addition, requiring vehicles to be cleaned immediately after unloading is the most effective way to insure compliance by all transporters. Such procedures are already used by many transporters of solid waste.

Finally, Mr. Chairman, my bill requires that all vehicles which transport any type of solid waste must be clearly labeled as such in order to alert the shippers of the vehicles' previous cargo. It is essential for the Congress to mandate that all vehicles -- whether refrigerated or non-refrigerated; regardless of whether they have undergone cleaning procedures -- must bear clear markings to inform all future shippers that the vehicle that they are about to use has previously hauled solid waste. This requirement provides a simple yet effective safeguard against unscrupulous transporters willing to violate the bans on garbage backhauling outlined previously.

I hope that this committee, and the full Senate, will address these specific concerns of my mine during these proceedings and in your future deliberations.

As I said in opening, over 8 months have passed since I first introduced legislation to stop garbage backhauling. It's time for the Congress to act now.

Thank you Mr. Chairman.

TESTIMONY OF THE INTERSTATE COMMERCE COMMISSION
BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
MARCH 1, 1990

The Commission appreciates this opportunity to testify in support of S. 1751, the Safe Transportation of Food Act and S. 1904, the Clean Food Transportation Act, and to present the results of the Commission's inquiry into the problem of crosshauling food and refuse.

Background

Truck Transportation

During the summer of 1989, the Commission participated in a Federal Interagency Group formed in response to news accounts of trucks that transported meat and food products eastbound from the midwest and made return trips with baled waste trash from cities and municipalities in Pennsylvania and other Northeastern states to a large landfill in Ohio.

As part of the Interagency Group, the Commission's primary role was to conduct a field inquiry to develop background information on the practices and procedures followed in backhauling solid waste trash. The Commission updated its

inquiry in October, 1989 and January, 1990. The results of this investigation indicate that the practice of crosshauling food with solid waste and other potentially harmful commodities in trailers and refrigerated vehicles was taking place in mid-to-late 1989. Since that time, incidents of crosshauling may have diminished somewhat, but continue to occur.

The Commission conducted its initial study between June 15 and July 14, 1989. Two teams of agents made on-site inspections of locations in New Jersey, New York, Pennsylvania, and Ohio. One team determined how trash is collected, baled and loaded at origin points and how the transportation of trash from point-of-origin into the dump site is arranged. The other team visited an 800-acre landfill in Poland, OH operated by Browning-Ferris Industries (BFI) to inspect the unloading of trucks and the subsequent clean-out procedures at nearby truck wash facilities.

The teams concentrated on dump sites in order to attempt identification of vehicles engaged in crosshauling of food and refuse. At these locations they were unable to observe instances of tankers being used for both food and waste or other dangerous liquids, because the tankers are not used as frequently as other vehicles for transporting wastes to landfills. Tankers are more likely to be involved in crosshauling of food and chemicals; instances of this practice have been reported in the press and at hearings held before other Congressional committees.

The ICC teams found that households, commercial business facilities and light industry are the sources of trash picked up principally by municipal waste services and taken to collection points called transfer or generating stations. There it is sometimes sorted, compacted and either dumped locally or, in an increasing number of cases, loaded onto trucks for long-distance disposal. The principal exporters of solid waste appear to be located in Northeastern states, where the remaining landfills are unable to accommodate the volume of trash generated. It is estimated that New York City sent four million tons of garbage out of state last year. An estimated 750 trucks a day (or 15,000 tons of garbage) leave New Jersey for landfill sites in Pennsylvania, Kentucky and Ohio.

The need to dispose of waste at long distance landfills coincides with the desire of trucking companies to obtain a "backhaul" from the East, where trucks which have delivered commodities from the Midwest can be delayed until return loads are available. As a result, dry vans and refrigerated trailers were found to have hauled trash in order to obtain a paying load rather than "deadheading", or returning home empty.

Municipal waste services pay the transfer station to accept their refuse, and the transfer station in turn pays a broker to arrange the outbound transportation. Brokers contract to pay the trucking companies and landfill operators to dispose of the waste.

Garbage deposited at landfills is transported by both private and for-hire trucking companies. Private carriers are those engaged primarily in a non-transportation business, which use trucks to haul their own products. An example would be a food producer who uses his own trucks to pick up packing materials to go into the plant and then hauls the finished food product to the customer. For-hire carriers are those whose principal business is transportation itself. The latter must be licensed by the ICC if they perform interstate transportation of non-exempt commodities such as furniture and other manufactured items, but they are unregulated, under the Interstate Commerce Act (ICA), if they haul exempt commodities such as fresh fruits or vegetables. In addition, the Commission does not have jurisdiction over waste products (with the exception of nuclear waste), because refuse is not considered "property" under section 10521 of the ICA.

During a mid-1989 visit to the BFI landfill in Poland, OH, the ICC agents inspected operations at the facility and interviewed the landfill's manager, who stated that he received

approximately 300-400 truckloads a day, which include dump trucks. This total has since decreased to about 70 truckloads per day, according to BFI. The trucks are unloaded by "stringing" them with a cable that is looped around trash bales inside by hand. The cable extends the entire length of the trailer and to off-load, a BFI bulldozer pulls on the cable, dragging the bales out.

In those instances where the bales break apart either enroute or in the process of unloading making the "stringing" step unfeasible, the load must be taken off by scraping the inside of the trailer with a "Gradall" vehicle which uses a telescoping boom to reach in and drag out the material. Trailers are then hand swept of debris by BFI employees or by an outside contractor at the BFI landfill site. Any additional cleaning is usually conducted at the trucking companies' expense.

ICC agents also visited a truck wash located at the Truck World service area in Hubbard, OH. The driver of a refrigerated unit that had just emptied at the BFI landfill was interviewed and his unit inspected. Although just washed, it emanated powerful garbage odors and had also sustained damage to its inside insulation and two rear doors during the unloading process at the landfill. The load immediately prior to the garbage haul to BFI was fresh avocadoes from California to the Hunts Point market at New York, NY. Also interviewed were the operators of a

second truck wash owned by the same company. They said that their standard procedure for cleaning a trailer after a garbage haul was use of a high-pressure hot-water system not exceeding 100 degrees Fahrenheit in temperature. No detergent or other cleaning agent is used at either facility.

As a result of observing the same refrigerated trailer operated by a midwest carrier at a transfer station in Newark, NJ, and again at the Poland landfill, an ICC agent visited the carrier's Midwest headquarters office. The ICC agent traced the movement of the trailer and determined that the vehicle was loaded 29 times during a three month period, March 10 through June 30, 1989. In that period, the trailer carried eight loads of meat, six loads of solid waste and 15 other miscellaneous shipments.

In October 1989, ICC agents revisited the Poland landfill, a nearby truck washing facility, and several brokers and generating stations in the northern New Jersey and New York City areas. BFI officials told Commission personnel that BFI will no longer unload any refrigerator trailers loaded with solid waste trash. The prohibition is said to extend to all landfill facilities operated by BFI. Commission agents were advised that dry van solid waste trash arrivals at Poland were down to 50 or 60 per day as opposed to approximately 125 per day in the early summer

months. The truck wash facility indicated that its business is noticeably below earlier periods.

ICC personnel were also informed by several brokers and transfer stations in the northern New Jersey and New York City areas that solid waste trash continues to move to out of state destinations. The consensus was that refrigerator trucks and dry vans continue to move solid waste trash but that there has been some reduction in the use of refrigerated vehicles for this purpose.

The practice of backhauling garbage has prompted several recipient states to limit their importation of out-of-state waste. Both Ohio and Alabama have recently enacted temporary moratoriums on issuances of new permits for solid waste facilities and on modifications of existing facilities. The Ohio statute permits a local solid waste management district to limit (with some exceptions) receipt of solid wastes generated outside the district. The Commission has also been informed that the Governor of Pennsylvania has signed an executive order limiting to thirty percent the proportion of out-of-state trash deposited in Pennsylvania landfills. It remains to be seen whether these state actions are consistent with the Supreme Court's decision in City of Philadelphia v. New Jersey, 437 U.S. 617 (1978), which held that a New Jersey law prohibiting importation of waste

originating outside the state violated the Commerce Clause of the Constitution.

Rail Transportation

In late 1989 the Commission surveyed several railroads about whether they were engaged in the transportation of solid waste from the Northeast to landfills. One railroad, we were advised, has moved over 1100 shipments thus far this year from the greater New York Metropolitan area to destinations in Indiana, Ohio and Kentucky. The shipments move in privately owned or leased equipment and are returned empty from destinations for re-loading. Another rail carrier in the same area recently originated service and is currently handling about 8 shipments a week. In December, 1989 the Atlanta Journal and Constitution reported an interview with a senior railroad official who said that by the mid-1990's, American railroads expect to be earning $400 million annually by transporting garbage.

Despite the railroad's apparent interest in increasing their share of the market for transporting solid waste, the Commission's inquiry has not determined that railroads are cross-hauling food and waste products. A number of years ago, the railroad industry established a classification of boxcars entitled XF. These cars are used strictly for loading packaged food and commodities such as paper products. At present there are approximately 3600 XF cars in the railroad fleet. These cars

are generally in assigned service and are returned empty to the shippers after unloading. It is our understanding that there are very few complaints about the condition of these cars from the shippers. The Commission has also learned of instances of intermodal shipments of refuse, but has not found any examples of intermodal crosshauling of food and waste materials.

S. 1751 and S. 1904

The Commission is given no new authority under either S. 1751 or S. 1904. The former bill prohibits use of refrigerated vehicles to transport solid waste, and prohibits use of cargo tanks to transport food if the tank has been used to transport hazardous materials or hazardous waste. S. 1904 prohibits use of refrigerated vehicles and cargo tanks to transport solid wastes and nonfood products, respectively, unless the Transportation Secretary has determined that the transportation at issue will not make the transported food unsafe. It appears that under S. 1904 all cargo tanks would have to be permanently identified as either transporting only nonfood products, or as transporting only food and permissible nonfood products. Transportation of asbestos and infectious waste must be performed in dedicated vehicles. S. 1904 also provides for training of inspectors responsible for enforcing the legislation.

Both bills require the Transportation Secretary to conduct a study and report to Congress concerning additional measures

necessary to ensure the safety of food transported in motor vehicles, including refrigerated vehicles and cargo tanks. Each bill authorizes the Secretary to waive individual provisions where not contrary to the public interest. Civil and criminal penalties are prescribed for violations, and the Attorney General is authorized to bring enforcement actions and seek injunctions in federal district courts against violations and to eliminate imminent hazards. The latter authority is also given to the Secretary. Inconsistent state laws are preempted unless the Secretary finds that a state law offers greater protection, and that the state law does not unreasonably burden interstate commerce. In addition, the Secretary is directed to issue implementing regulations and to report to Congress concerning additional measures needed to ensure the safety of food transported in refrigerated vehicles, cargo tanks and other vehicles.

The Commission concludes that an ample record of problems exists to support passage of either S. 1751 or S. 1904. With respect to cargo tanks, the approach taken in S. 1904 is the more comprehensive. It prohibits transportation of food in cargo tanks if the tank has been used to transport any nonfood product unless the nonfood product has been determined by the Secretary to not make food unsafe. S. 1751, by contrast, only bans transportation of food in cargo tanks which have been used to

transport hazardous materials or hazardous wastes. S. 1751 fails to define the term "cargo tank".

S. 1904 may require more labelling than necessary in that it dictates that the entire fleet of tank trucks be labelled, either as 1) transporting only nonfood products, or 2) as transporting only food and acceptable nonfood products. The public interest in an uncontaminated food supply could perhaps be protected just as well if the legislation required only the labelling of tankers in which food could be safely transported. Food shippers would thereby be able to identify on sight those tankers in which food could be carried, and could reject other equipment. Similarly, shippers of non-food products that are banned from loading in food grade tankers could avoid using such equipment.

Neither bill contemplates that equipment which previously transported products other than food and acceptable nonfood products could be cleaned and used later for food products. The Commission agrees with the thrust of sect. " 6 in both bills (regarding dedicated vehicles for infectious wastes and some hazardous materials), which recognizes that there are certain substances which could never be sufficiently cleaned to permit subsequent transportation of food. However, there may be less dangerous materials which could be effectively cleaned from a vehicle and which are prohibited, under both bills, from ever being transported in a vehicle used for food. The Committee may

wish to consider providing for the possibility of such cleaning, provided proper safeguards (such as approved cleaning procedures) are applied.

In conclusion, either bill should provide an effective solution to the problem of crosshauling food and refuse, although S. 1904 arguably provides a higher degree of protection. Industry compliance with either bill will result in additional transportation costs. We do not have sufficient information to be able to estimate those costs, but the Committee may wish to obtain estimates from industry and from the Transportation Department. The Commission would be pleased to provide further assistance to the Subcommittee, or to the Transportation Department should legislation be passed. In particular, the Commission would be willing to inform the Secretary about the existence of imminent hazards or other violations of which the Commission, particularly its local field offices, may become aware.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE
REGARDING THE CLEAN FOOD TRANSPORTATION ACT

March 1, 1990

Farm Bureau is the nation's largest general farm organization, with members in every state, in addition to Puerto Rico, producing virtually every type of agricultural commodity. As growers of our nation's food supply, farmers and ranchers work hard to ensure that the American consumer has safe and abundant food on their tables every day of the year. We are very much concerned about the practice of backhauling waste and hazardous materials and therefore, we support the legislation being considered today banning the hauling of garbage and chemicals in any truck used to haul foodstuffs.

At our annual meeting in January, Farm Bureau adopted the following policy with respect to transporting food products: We strongly support effective precautions to ensure delivery of a safe, wholesome food product to the ultimate consumer. We support the current inspection program and regulations for trucks used to haul food products. We urge that all truck owners/operators be held responsible to assure a truck used to haul non-food items is cleaned properly to prevent any contamination of food products that are subsequently shipped in a truck.

As members of this Subcommittee are aware, there are several federal agencies that have some responsibility for regulations designed to prevent contamination of food by hazardous materials during transportation. Some of these federal agencies include the U.S. Department of Transportation, the U.S. Department of Health and Human Services, the Food and Drug Administration, the Department of Agriculture's Food Safety Inspection Service and the U.S. Environmental Protection Agency. State governments also have regulations to prevent contamination of food.

Unfortunately, in hearings and testimony before the House Public Works and Transportation Committee last summer, it became abundantly clear that there are no federal laws that expressly prohibit the transportation of foodstuffs in vehicles that previously hauled waste or hazardous materials. There are no federal laws that ban this dangerous practice of backhauling garbage or hazardous chemicals in refrigerated trucks or tankers used to haul liquid food products.

Obviously, when the same vehicle is used to transport both hazardous materials, such as pesticides and fertilizer, and food products or animal feed, the potential does exist for food contamination. Farmers and ranchers recognize the need to take precautions to assure that food products and animal feed do not become contaminated or adulterated as a result of being transported in a truck that has carried hazardous materials. Carriers should also recognize that they, too, have some responsibility to prevent the contamination of food by consistently providing clean and sanitary trucks.

In view of the fact that chemicals and garbage have been transported in the same vehicles as food grade products, it is little wonder the practice has drawn so much fire and sowed so much confusion among American consumers. While backhauling might be an economic necessity, we believe its the federal government's responsibility to see that this practice does not continue. Public health and safety warrants that this abuse be stopped.

In our opinion, Mr. Chairman, S. 1904, the Clean Food Transportation Act, will help ensure the safe transportation of our food. The legislation prohibits refrigerated vehicles used in the transportation of food from being used in the transportation of solid waste. It would prohibit tank trucks used in the transportation of liquid food such as milk, cooking oil, wine or fruit juices to be used in the transportation of liquid waste.

We also believe S. 1751, the "Safe Transportation of Food Act" is likewise a step in the right direction. This proposal would prohibit hauling solid wastes in refrigerated vehicles. It would also prohibit cargo tanks used to haul loads of hazardous materials from carrying liquid foodstuffs. The legislation also requires the Department of Transportation to issue regulations on the requirements relating to recordkeeping, labeling of vehicles, monitoring of compliance and other provisions to assure that food transported in refrigerated motor vehicles and cargo tanks throughout the United States is safe and is no detriment to public health.

Farm Bureau believes the two proposals under consideration by this Subcommittee, S. 1904 and S. 1751, are responsible solutions to the problem of backhauling garbage and chemicals in food trucks and we urge the legislation be favorably reported by Committee and enacted by the Congress.

Thank you for the opportunity to present our views with respect to the transportation of food.

Statement of Adolph Coors Company
Before the Commerce, Science, and Transportation
Subcommittee on
Surface Transportation
United States Senate

Hearing on
S. 1751, The Safe Transportation of Food Act
and
S. 1904, The Clean Food Transportation Act

March 1, 1990

Mr. Chairman, we at Adolph Coors Company would like to share with you and your subcommittee colleagues our concerns with respect to the so-called garbage backhauling bills pending before you (S. 1751 and S. 1904, introduced by Senators Gorton and Gore, respectively). Adolph Coors Company shares your deep concern about recent media reports of appalling backhauling practices that jeopardize human health and safety. The backhauling of solid waste and hazardous materials in the same vehicles or containers that are used to transport food products is a situation that demands prompt attention. Thus, the Adolph Coors Company strongly supports swift action on antibackhauling legislation.

While Coors commends Senators Gorton and Gore for introducing bills to combat backhauling practices that threaten human health, we are concerned that our practice of backhauling empty beverage containers for reuse or recycling could be disrupted if either bill was adopted in its current form. If the Secretary of Transportation promulgates regulations pursuant to either proposal that fail to recognize that backhauling some solid wastes does not pose a risk to packaged food products, our reuse and recycling efforts could be threatened.

Adolph Coors Company markets its beverage products in sealed glass, aluminum, or steel containers. Coors routinely uses its refrigerated trucks to backhaul refillable glass beverage containers and steel kegs, both of which are reused. We also backhaul aluminum cans--often in the form of scrap aluminum that is bundled and packaged--for recycling. Given the obvious benefits associated with reuse and recycling, we feel certain that the author of either bill did not intend to promote a solution to the backhauling problem that could negatively impact our efforts to reuse or recycle our beverage containers.

Again, Mr. Chairman, we wish to reiterate our strong support for the goals of the backhauling initiatives pending before your subcommittee. We look forward to working with you, the sponsors of S. 1751 and S. 1904, and the other members of the subcommittee to expedite action on this important issue. We wish to point out, however, that Adolph Coors Company is not contributing to the backhauling problem that these bills are intended to address. Rather, we are working to help solve our nation's solid waste problems through the reuse and recycling of our beverage containers. Thus, Adolph Coors Company asks that you consider including language in the backhauling measure that you report from your subcommittee language that ensures that our environmentally beneficial practice--which does not pose a threat to human health--is not prohibited or subjected to unwarranted and potentially costly regulation.

Coalition for a Safe Food Transportation Initiative
1764 Old Meadow Lane, #350 , McLean, VA 22102
(703) 821-0770

February 22, 1990

The Honorable Ernest F. Hollings
United States Senate
Washington, DC 20510

Dear Senator Hollings:

The Coalition for a Safe Food Transportation Initiative, including members of the organizations listed below, representing food producers, processors, wholesalers, distributors, retailers and foodservice providers, stand firmly behind the proposition that ensuring the safety of our nation's food supply is our primary responsibility. With that in mind, we support in principle the concepts embodied in legislative proposals relating to the safe transportation of food ("Safe Transportation of Food Act" - S.1751;" Clean Food Transportation Act" - S.1904) which have been introduced by members of the Senate Commerce Committee's Subcommittee on Surface Transportation.

As the Subcommittee prepares for a March 1 hearing on this issue, however, we think additional points need to be made for inclusion in the legislative language. The American public should be assured not only that the food products they consume have been processed, stored and prepared in a safe manner, but also that when transported, they have been moved in a safe, non-hazardous fashion. Inclusion of the following points of clarification will help accomplish this security.

We are concerned that certain industry practices generally accepted as non-hazardous might inadvertently be proscribed by the proposed legislation. For example, it is common in the industry to deliver food products by motor vehicle to a wholesaler, retailer or foodservice outlet and return by the same vehicle packaging materials, pallets, distressed food products, outdated products previously delivered, etc. Clearly, these practices would not fall within the scope of the egregious and harmful examples of hazardous practices which have been the subject of countless media investigations.

Failure of the Congress and the rule-makers to appreciate the efficiencies of such non-hazardous practices would have undesirable and probably unintended results. For example, preventing the backhauling or reloading of pallets and packaging materials would require that many more vehicles be used in shipping food products. The additional number of vehicles not only would put increased pressure on the nation's highways, but also would raise the cost of transporting the food products. These raised costs inevitably would be passed on to the consumer in the form of higher food prices.

We also are concerned that some interpretations of the language in the pending proposals would impose the requirements on the shipper (the person who uses or arranges for the transportation of food), but would not impose the same requirements on the transporter. Clearly, an entity providing the transportation service must be within the purview of this proposal.

Otherwise, the goal of ensuring that all food products are transported in a safe and non-hazardous fashion will not be achieved. We would suggest, therefore, that language be adopted such that "no carrier, shipper, receiver, broker or other person shall use, offer for use, or arrange for the use of" the transportation of food if the vehicle has been used to transport hazardous materials, as defined by the bill.

In addition, placing the rule-making duty solely with the Secretary of Transportation may seriously conflict with obligations already imposed by law on the Secretaries of Agriculture and Health and Human Services regarding the transportation of food products. We would recommend, therefore, that the Secretary of Transportation consult with the Secretaries of Agriculture and Health and Human Services, as well as the Administrator of the Environmental Protection Agency, in developing the regulations to implement the law.

As regards the regulations, we feel that it is vitally important to establish standards governing the decontamination of any motor vehicle that has been used to transport any prohibited solid waste. It simply does not make sense to forever bar a motor vehicle from use in the transportation of food products, merely because it has been used to transport solid waste, if the vehicle can be safety and thoroughly decontaminated before it is used for the transportation of food products.

We think it is critical that any person providing a motor vehicle for use in the transportation of food products provide a written certification or guarantee to the shipper, receiver or other person using the vehicle. Members of the industry obtain transportation services from a great number of authorized motor carriers operating both in interstate and intrastate commerce. In addition, many authorized carriers lease motor vehicles from third-party sources, such as owner-operators, other carriers and even private carriers.

As a result, manufacturers and distributors of food products are utterly dependent on the person furnishing the vehicles to take primary responsibility for ensuring that the vehicle is safe for the transportation of such products. A certification procedure, through which a vehicle is shown to be free from contamination, would allow users of transportation services to rely on such a certification without fear of exposing themselves to liability if a problem occurs.

Finally, because our food distribution system is national in scope, the prospect of fifty varying requirements in the transportation of food products would be inefficient and intolerable. We would endorse, therefore, a national uniformity provision in the legislative language.

It is our hope that you will consider our comments as you proceed with this

important legislation in the Subcommittee on Surface Transportation. If you require further information, please do not hesitate to contact us.

Sincerely,

American Feed Industry Association
American Frozen Food Institute
American Meat Institute
The Beer Institute
National Broiler Council
National Fisheries Institute
National Food Processors Association
National Restaurant Association
National Soft Drink Association
National Turkey Federation

United Fresh Fruit and Vegetable Association

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Hunter Bros., Inc.
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James C. Wiers
Wiers Farm/Dutch Maid Produce
Willard, Ohio

President
George S. Dunlop

the fresh approach

23 February 1990

The Honorable Ernest F. Hollings
The United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

The United Fresh Fruit and Vegetable Association is the national trade association for the fresh produce industry. Our 2,500 members handle over 80 percent of the fresh produce commercially marketed in the United States. Over 90 percent of all produce transported is moved by truck. For this reason, we are very supportive of ensuring that foods moved by truck are not contaminated during transport.

The March 1 hearing will focus on S.1751 and S.1904. However, we believe there are several issues that either have not been addressed or that need to be clarified.

- A national standard--this is imperative since our food distribution system is national in scope. Fifty varying state requirements would be inefficient and cause chaos in the food distribution system.

- Standards should be established for proper cleaning and sanitizing of any motor vehicle that previously transported certain solid waste. A truck should not be prohibited from transporting food if it can be made safe for that purpose.

- Clarification is needed as to what waste would be considered non-hazardous. Otherwise, industry practices generally accepted as non-hazardous might be considered hazardous by enforcement officials. Food packaging materials, pallets, distressed food products and outdated food products should be identified as safe backhauls.

We do hope that you will take our comments under consideration. If you would like additional information, please do not hesitate to contact us.

Sincerely,

Claudia R. Fuquay

Claudia R. Fuquay
Director, Congressional Relations

THE
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EXECUTIVE VICE PRESIDENT
James E. Bartley
1090 Vermont Avenue, NW
Washington, DC 20005-4905

Office of the Executive Vice President

February 28, 1990

The Honorable J. James Exon
Chairman
Surface Transportation Subcommittee
Commerce, Science and
Transportation Committee
United States Senate
SH-428 Hart Office Building
Washington, DC 20510

Dear Chairman Exon:

The National Industrial Transportation League, the nation's oldest and largest shippers' transportation trade association, respectfully takes this opportunity to present its views on S. 1904 and S. 1751, legislation aimed at preserving the integrity of products when in transit.

League members are deeply concerned about the product integrity issue, and believe that remedial action is needed to assure that public safety is not endangered due to unethical or careless carrier, as well as related, transportation practices. As a result, the League stands ready to support a reform measure which addresses the integrity issue in a manner that clearly enhances safety without unduly burdening commerce.

The League would note that it is working with other concerned industry groups, under the direction of the Food and Drug Administration, to develop standards for the safe use of tank trucks. While still in the initial stages, these standards offer the very real promise of a clear and easily understood system for using tank trucks for food and food compatible products and for using them for other purposes.

The League has reviewed both S. 1904 and S. 1751. It believes that, with certain technical changes, it can support both measures. The only major difference between the two appears to be that S. 1751 affects only carriers, while S. 1904 would affect carriers, shippers, and all other parties involved in the transportation and distribution network. S. 1751 appears to create an easier enforcement system, because the focus would be on those responsible for the cargo vehicle itself. S. 1904 appears to create a more complicated enforcement system, since it encompasses individuals and entities which have no direct responsibility or control over the vehicle.

The League supports the inclusion of preemption language in both measures. This provision provides the necessary federal leadership to assure that providers and purchasers of transportation services have a clear regulatory framework within which to operate, rather than a conflicting patchwork of state and local requirements that will erode, rather than enchance, this segment of our national transportation system.

In addition, there are the problems created by the lack of reliable information about the scope of this problem. The proposed studies help to close this informational gap so that we can make informed decisions about these issues.

There is one last technical point the League would note. In section 11 of S. 1751, the definition of "person" may exempt from the bill's scope individuals who are operating for their own benefit such as private carriage or who are engaged in illicit activities such as unauthorized dumping. The League would recommend that the phrase "commerce or in furtherance of a commercial enterprise" be limited to governmental entities or Indian tribes.

The League appreciates this opportunity to present the views of the shipping public, and looks forward to working with you, your committee, and your counterparts on the Senate, Commerce, Science and Transportation Committee to create effective, practical legislation which will better protect the integrity of all products moving in our national transportation and distribution system. If you have any questions or wish to discuss the matter further, please do not hesitate to contact me or my staff.

Sincerely,

James E. Bartley

James E. Bartley
Executive Vice President

JEB:lfj

1990 APR -5 PM 2:42

William H. Dempsey
President

ASSOCIATION
OF AMERICAN
RAILROADS

April 3, 1990

The Honorable J. James Exon
Chairman
Subcommittee on Surface Transportation
Committee on Commerce, Science, and Transportation
U.S. Senate
Washington, D.C. 20510

Dear Senator Exon:

On March 1, 1990, I testified before your Subcommittee on the issue of back hauling of chemicals and waste in vehicles used for food and related products. At the hearing I was asked to respond for the record on how railroads clean rail cars. My response is as follows.

Normally, railroads try to avoid situations where it would be necessary for themselves or their shippers to bear the expense of cleaning. They avoid the necessity of cleaning by using freight cars for compatible loads. Of course, there are times when cleaning is unavoidable. When cleaning is necessary, rail cars are cleaned in one of five ways:

--sweeping or brushing;
--washing;
--using highly pressurized air;
--steam cleaning; or
--replacing a car's interior lining.

The method of cleaning cars depends, of course, on the type of contamination and the type of commodities transported. For example, bags of flour in a car may break. Upon unloading, it might be necessary to remove the spilled flour by using compressed air or by washing. A car used to transport grain might contain residues of grain that can be removed only by washing. A car previously used to transport fertilizer might need washing if its next load was grain. Finally, a car used to transport paper might need to be swept or vacuumed if required for the transportation of another commodity.

Once again, thank you for the opportunity to testify before your Subcommittee. If I can be of any further assistance on this or any other issue, please let me know.

Sincerely,

W. H. Dempsey